

William Kingdon
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THE
SECURITY
OF
Englishmen's Lives :-

OR,
The TRUST, POWER and DUTY of
Grand Juries of England

Explained according to the Fundamentals of
the *English* Government, and the Declaration
of the same made in Parliament by many
Statutes.

First printed in the Year 1681.

Written by the Right Honourable

JOHN LORD SOMERS,

Baron of EVESHAM,

And Lord HIGH CHANCELLOR of ENGLAND.

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This excellent Tract has for many years been very scarce, although several times strongly recommended by the best writers on the English constitution; and in particular by the learned and able author of The Letter upon Libels and Warrants, &c. As that ingenious work treats so fully upon the rights and privileges of Petit and Special Juries, this admired performance, on the subject of Grand Juries, is thought to be its proper companion.



BISHOP Burnet informs us, that this Tract was written on occasion of the Grand Jury of the city of London returning an *Ignoramus* upon a bill of indictment presented against Lord Shaftesbury in the year 1681. The court declaiming violently against this Jury, and affirming that they were actuated by a spirit of party, it was urged in their defence (says the Bishop) “ that by the exprefs words of their
“ oath, they were bound to make true present-
“ ments of what should appear true to them;
“ and therefore if they did not believe the
“ evidence, they could not find a bill, though
“ sworn to. A book was writ to support that,
“ in which both law and reason were brought
“ to confirm it. It past as writ by Lord Essex,
“ though I understood afterwards it was writ
“ by SOMERS, who was much esteemed and
“ often visited by Lord Essex, and who trusted
“ himself to him, and writ the best papers
“ that came out in that time. It is true, by
“ the practice that had generally prevailed,
“ Grand Juries were easy in finding bills upon
“ a slight and probable evidence. But it was
“ made out, that the words of their oath,
“ and the reason of the law, seemed to oblige
“ them to make no presentments, but such
“ as they believed to be true.” *Vol. I. p. 509.*
fol. Edit.

A certain living writer speaks thus : “ Since
 “ the foundation of the English government,
 “ many have been the attempts to break in
 “ upon its constitution; and with various
 “ success. More than once it has, seemingly,
 “ been quite overturned and destroyed, either
 “ by the open attacks of violence, or by the
 “ more sure ways of undermining, sapping
 “ and corrupting; and sometimes by all to-
 “ gether: but such has been our happiness,
 “ that providence has, hitherto, been so be-
 “ nign, as, upon all such occasions, to
 “ stretch forth the almighty arm in our de-
 “ fence, never failing to animate some great
 “ and good men to undertake the recovery of
 “ our civil and religious rights; and enlight-
 “ ening the minds of the people, to a noble
 “ imitation of their virtue and courage.

“ One of which was the great author of
 “ *The Security of Englishmen's Lives*; who, at
 “ a time when despotism had taken long
 “ strides towards, and very near had broke
 “ down all the fences of liberty, sent forth
 “ this small Treatise into the world; which,
 “ together with some other excellent things
 “ published about the same time, convinced
 “ the generality of the people of the inesti-
 “ mable value of those birth-rights, which
 “ were then going to be taken from them;
 “ and raised that spirit throughout the king-
 “ dom, which was at last productive of the
 “ great and happy REVOLUTION; which re-
 “ stored our antient rights and privileges, and
 “ confirmed them to us so strongly, that no-
 “ thing

“ thing less than a general luxury and depravity of manners, and their natural and inseparable concomitant, an universal corruption, can ever deprive us of them.

“ One of the great outworks of liberty is a *Grand Jury*; which, by our old constitution, was the principal guard of every man's life, liberty and estate; for by our known laws no subject of this realm could be brought to the bar of justice, without having his case first inquired into by a Grand Jury; who are in the first place to examine whether the charge be in its own nature criminal or indictable; and secondly, whether the person so charged be guilty of the fact for which he stands accused. If in the first instance they don't find the charge to be in its own nature criminal or indictable, then they have nothing more to do than to discharge the bill as insufficient; and in the second instance, if the accusation be not properly supported by evidence, they must by their oaths throw out the indictment, to the great relief of the unhappy person so accused: and that this is a principal part of a Grand Jury's office, appears not only from legal reason, but by express statutes, viz. 25 *Edw.* 3. 4, and 42 *Edw.* 3. 3, which say, “that for preventing mischiefs done by FALSE ACCUSERS, none shall be put to answer, unless it be by indictment, or presentment of good and lawful men of the same neighbourhood where such deeds be done,”

“ which

“ which can be meant of no other than a
 ‘ Grand Jury.

“ But, alas! how often has this well-con-
 “ trived barrier of liberty been broke in upon
 “ by the unconstitutional method of bringing
 “ or filing informations in the court of
 “ King’s Bench, and obliging many of the
 “ best subjects of this realm, to answer at
 “ that or some other awful tribunal, for no
 “ crimes but bravely endeavouring to support
 “ the rights and privileges of *Englishmen*,
 “ without so much as suffering a *Grand Jury*
 “ to inquire whether the case be criminal or
 “ not? This unconstitutional method of bring-
 “ ing informations, and charging the subjects
 “ of this realm, by the crafty way of innuendo,
 “ with the most flagitious crimes, deserves
 “ the strictest attention of the legislature, and
 “ calls aloud upon the great council of the
 “ nation for redress.” *Rights of Englishmen.*

*Another modern writer, after very strongly
 recommending the republication of this Tract, says,*
 “ This little book explains the whole duty of
 “ Grand Juries, the high importance of them
 “ to every individual in the kingdom, as the
 “ life and safety of all depends upon them.
 “ It also shews their independency of judges;
 “ explains the duty and power of judges, and
 “ not only of judges but of kings, and is a full
 “ account of that most essential part of the
 “ English constitution, upon which all our
 “ other liberties depend.” *Advice to Posterity.*

THE
SECURITY
OF
Englishmen's Lives.

Written by Lord SOMERS.

THE principal ends of all civil government, and of human society, were the security of mens lives, liberties and properties, mutual assistance and help unto each other, and provision for their common benefit and advantage; and where the fundamental laws and constitution of any government have been wisely adopted unto those ends, such countries and kingdoms have increased in virtue, prowess, wealth, and happiness, whilst others, through the want of such excellent constitutions, or neglect of preserving them, have been a prey to the pride, lust and cruelty of the most potent, and the people have had no assurance of their liberties or lives, but from their grace and pleasure: they have been many times forced to welter in each other's blood, in their master's quarrel for dominion, and at best they have served like beasts of burden, and by continual, base subserviency to their master's vices, have lost all sense of true religion, virtue and manhood.

Our

Our ancestors have been famous in their generations for wisdom, piety, and courage, in forming and preserving a body of laws to secure themselves and their posterities from slavery and oppression, and to maintain their native freedoms; to be subject only to the laws made by their own consent in their general assemblies, and to be put in execution chiefly by themselves, their officers and assistants; to be guarded and defended from all violence and force, by their own arms, kept in their own hands, and used at their own charge under their prince's conduct; entrusting nevertheless an ample power to their kings and other magistrates, that they may do all the good, and enjoy all the happiness, that the largest soul of man can honestly wish; and carefully providing such means of correcting and punishing their ministers and counsellors, if they transgress the laws, that they might not dare to abuse or oppress the people, or design against their freedom or welfare.

This body of laws our ancestors always esteemed the best inheritance they could leave to their posterities, well knowing that these were the sacred fence of their lives, liberties, and estates, and an unquestionable title whereby they might call what they had their own, or say they were their own men: the inestimable value of this inheritance moved our progenitors with great resolution bravely from age to age to defend it; and it now falls to our lot to preserve it against the dark contrivances of a popish faction, who would by

frauds, sham-plots, and infamous perjuries, deprive us of our birth-rights, and turn the points of our swords (our laws) into our own bowels ; they have impudently scandalized our parliaments, with designs to over-turn the monarchy, because they would have excluded a popish successor, and provided for the security of the religion and lives of all protestants : they have caused lords and commoners to be for a long time kept in prisons, and suborned witnesses to swear matters of treason against them ; endeavouring thereby, not only to cut off some who had eminently appeared in parliament for our antient laws, but through them to blast the repute of parliaments themselves, and to lessen the people's confidence in those great bulwarks of their religion and government.

The present purpose is to shew how well our worthy forefathers have provided in our law for the safety of our lives, not only against all attempts of open violence, by the severe punishment of robbers, murderers, and the like, but the secret poisonous arrows that fly in the dark, to destroy the innocent by false accusation and perjuries. Our law-makers foresaw both their dangers from malice and passion, that might cause some of private condition to accuse others falsely in the courts of justice, and the great hazards of worthy and eminent men's lives, from the malice, emulation, and ill designs of corrupt ministers of state, or otherwise potent, who might commit the most odious of murders in the form

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and course of justice; either by corrupting of judges, as dependent upon them for their honour and great revenue, or by bribing and hiring men of depraved principles, and desperate fortunes, to swear falsely against them; doubtless they had heard the scriptures, and observed that the great men of the Jews sought out many to swear treason and blasphemy against Jesus Christ: they had heard of *Abab's* courtiers and judges, who in the course and form of justice, by false witnesses, murdered *Naboth*, because he would not submit his property to an arbitrary power. Neither were they ignorant of the antient *Roman* histories, and the pestilent false accusers that abounded in the reign of some of those emperors, under whom the greatest of crimes was to be virtuous: therefore, as became good legislatures, they made as prudent provision as perhaps any country in the world enjoys, for equal and impartial administration of justice in all the concerns of the people's lives; that every man, whether lord or commoner, might be in safety, whilst they lived in due obedience to the laws.

For this purpose it is made a fundamental in our government, that unless it be by parliament, no man's life shall be touched for any crime whatsoever, save by the judgment of at least twenty-four men*; that is, twelve or more, to find the bill of indictment, whether he be peer of the realm, or commoner, and twelve peers, or above, if a lord, if not,

* See Lord *Coke's Instit.* 3d part, p. 40.

twelve commoners, to give the judgment upon the general issue joined *; of these twenty-four the first twelve are called the grand inquest, or the grand jury, for the extent of their power, and in regard that their number must be more than twelve, sometimes twenty-three, or twenty-five, never were less than thirteen, twelve whereof at least must agree to every indictment, or else it is no legal verdict; if eleven of twenty-one, or of thirteen, should agree to find a bill of indictment, it were no verdict. The other twelve, in commoners cases, are called the petit jury, and their number is ever twelve; but the jury for a peer of the realm may be more in number, though of like authority. The office and power of these juries is *judicial*, they only are the judges from whose sentence the indicted are to expect life or death; upon their integrity and understanding, the lives of all that are brought into judgment do ultimately depend; from their verdict there lies no appeal; by finding guilty or not guilty, they do complicately resolve both law and fact.

As it hath been the law, so it hath always been the custom, and practice of these juries, upon all general issues, pleaded in cases civil as well as criminal, to judge both of the law and fact. So it is said in the report of the Lord Chief Justice Vaughan†, in Bushel's case, that these juries determine the law in all matters where issue is joined and tried, in the prin-

* See *Mag. Chart. Coke's 2d part of Instit.* p. 50, 51.

† See the Reports of the Lord Chief Justice Vaughan, p. 150, 151.

cipal case, whether the issue be about a trespass or a debt, or disseizin in assizes, or a tort, or any such like, unless they should please to give a special verdict with an implicit faith in the judgment of the court, to which none can oblige them against their wills.

These last twelve must be men of equal condition with the party indicted, and are called his peers; therefore if it be a peer of the realm, they must be all such, when indicted at the suit of the king; and in the case of commoners, every man of the twelve must agree to the verdict freely, without compulsion, fear, or menace, else it is no verdict. Whether the case of a peer be harder, I will not determine. Our ancestors were careful that all men of the like condition and quality, presumed to be sensible of each other's infirmity, should mutually be judges of each other's lives, and alternately taste of subjection and rule; every man being equally liable to be accused, or indicted, and perhaps to be suddenly judged by the party, of whom he is at present judge, if he be found innocent. Whether it be lord or commoner that is indicted, the law intends (as near as may be) that his equals that judge him, should be his companions, known to him, and he to them, or at least his neighbours or dwellers near about the place where the crime is supposed to have been committed, to whom something of the fact must probably be known; and though the lords are not appointed to be of the neighbourhood to the indicted lord, yet the law supposes them to be companions,

companions, and personally well known each unto the other, being presumed to be of a small number (as they have antiently been) and to have met yearly or oftener in parliament, as by law they ought, besides their other meetings, as the hereditary counsellors of the kings of England. If time hath altered the case of the lords; as to the number, indifferency and impartiality of the peers, it hath been, and may be worthy of the parliament's consideration, and the greater duty is incumbent upon grand juries, to examine with the utmost diligence the evidence against peers, before they find a bill of indictment against any of them, if in truth it may put their lives in greater danger.

It is not designed at this time to undertake a discourse of petit juries, but to consider the nature and power of grand inquests, and to shew how much the reputation, the fortunes, and the lives of Englishmen, depend upon the conscientious performance of their duty.

It was absolutely necessary for the support of the government, and the safety of every man's life and interest, that some should be trusted to inquire after all such as by treasons, felonies, or lesser crimes, disturbed the peace, that they might be prosecuted, and brought to condign punishment; and it was no less needful for every man's quiet and safety, that the trust of such inquisitions should be put into the hands of persons of understanding and integrity, indifferent, and impartial, that might suffer no man to be falsely accused, or defamed,
nor

nor the lives of any to be put in jeopardy, by the malicious conspiracies of great or small, or the perjuries of any profligate wretches : for these necessary, honest ends was the institution of grand juries.

Our ancestors thought it not best to trust this great concern of their lives and interests in the hands of any officer of the king's, or in any judges named by him, nor in any certain number of men during life, lest they should be awed or influenced by great men, corrupted by bribes, flatteries, or love of power, or become negligent, or partial to friends and relations, or pursue their own quarrels or private revenges, or connive at the conspiracies of others, and indict thereupon. But this trust of inquiring out, and indicting all the criminals in a county, is placed in men of the same county, more at least than twelve of the most honest, and most sufficient for knowledge, and ability of mind and estate, to be from time to time at the sessions and assizes, and all other commissions of oyer and terminer, named and returned by the chief sworn officer of the county, the sheriff, (who was also by express law antiently chosen annually by the people of every county) and trusted with the execution of all writs and processes of the law, and with the power of the county to suppress all violences, unlawful routs, riots, and rebellions. Yet our laws left not the election of these grand inquests absolutely to the will of the sheriffs, but have described in general their qualifications, who shall

shall inquire and indict either lord or commoner: they ought, by the old common law, to be lawful liege people, of ripe age; not over-aged or infirm, and of good fame amongst their neighbours, free from all reasonable suspicion of any design for himself or others, upon the estates or lives of any suspected criminals, or quarrel, or controversy with any of them: they ought to be indifferent and impartial, even before they are admitted to be sworn, and of sufficient understanding and estate for so great a trust. The antient law-book, called *Briton**, of great authority, says, The sheriff's bailiffs ought to be sworn to return such as know best how to inquire, and discover all breaches of the peace; and lest any should intrude themselves, or be obtruded by others, they ought to be returned by the sheriff, without the denomination of any, except the sheriff's officers. And agreeable hereunto was the statute of eleven Henry IV. in these words †: “ *Item,*
 “ Because of late inquests were taken at *West-*
 “ *minster* of persons named to the justices,
 “ without due return of the sheriff, of which
 “ persons some were outlawed, &c. and some
 “ fled to sanctuary for treason and felony, &c.
 “ by whom, as well many offenders were in-
 “ dicted, as other lawful liege people of the
 “ king not guilty, by conspiracy, abetment,
 “ and false imagination of others, &c. against
 “ the course of the common law, &c. it is,
 “ therefore granted for the ease and quietness

* See *Briton*, p. 9. and 10. † See eleven Henry IV.

“ of the people, that the same indictment,
 “ with all its dependencies, be void, and
 “ holden for none for ever; and that from
 “ henceforth, no indictment be made by any
 “ such persons, but by inquest of the king's
 “ liege people, in the manner as was used,
 “ &c. returned by the sheriffs, &c. without
 “ any denomination to the sheriffs, &c. ac-
 “ cording to the law of England; and if any
 “ indictment be made hereafter, in any point
 “ to the contrary, the same be also void, and
 “ holden for none for ever.” See also the Sta-
 tute of West. 2d cap. 38. and *Articul. super*
*Cortas**, ch. 9.

So careful have our parliaments been that
 the power of grand inquests might be placed
 in the hands of good and worthy men, that
 if one man of a grand inquest, though they
 be twenty-three or more, should not be *liber*
& legalis homo, or such as the law requires,
 and duly returned without denomination to the
 sheriff, all the indictments found by such a
 grand jury, and the proceedings upon them,
 are void and null. So it was adjudged in
 Scarlet's case.

I know too well, that the wisdom and care
 of our ancestors, in this institution of grand
 juries, hath not been of late considered as it
 ought; nor the laws concerning them duly
 observed; nor have the gentlemen and other
 men of estates, in the several counties, dis-
 cerned how insensibly their legal power and
 jurisdiction in their grand and petit juries is

* See *Coke's Instit.* 3d part, fol. 33.

decayed, and much of the means to preserve their own lives and interests, taken out of their hands. It is a wonder that they were not more awakened with the attempt of the late lord chief justice Keyling, who would have usurped a lordly, dictatorial power over the grand jury of Somersetshire, and commanded them to find a bill of indictment for murder, for which they saw no evidence, and upon their refusal, he not only threatened the jury, but assumed to himself an arbitrary power to fine them.

Here was a bold battery made upon the ancient fence of our reputations, and lives: if that justice's will had passed for law, all the gentlemen of the grand juries must have been the basest vassals to the judges, and have been penally obliged, *jurare in verba magistri*, to have sworn to the directions or dictates of the judges: but thanks be to God, the late long parliament (though filled with pensioners) could not bear such a bold invasion of the English liberty; but upon the complaint of one Sir Hugh Windham, foreman of the said jury, and a member of that parliament, the commons brought the then chief justice to their bar, to acknowledge his fault, whereupon the prosecution ceased.

The trust and power of grand juries, is, and ought to be, accounted amongst the greatest and of most concern, next to the legislative. The justice of the whole kingdom, in criminal cases, almost wholly depending

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upon

upon their ability and integrity, in the due execution of their office: besides, the concerns of all commoners, the honour, reputation, estates, and lives of all the nobility of England, are so far submitted to their censure, that they may bring them into question for treason, or felony, at their discretion: their verdict must be entered upon record, against the greatest Lords, and process must legally go out against them thereupon, to imprison them if they can be taken, or to outlaw them, as the statutes direct; and if any peer of the realm, though innocent, should justly fear a conspiracy against his life, and think fit to withdraw, the direction of the statutes, in proceeding to the outlawry, being rightly pursued, he could never reverse the outlawry, as the law now stands, save by pardon, or act of parliament. Hence it appears, that in case a grand jury should be drawn to indict a noble peer unjustly, either by means of their own weakness, or partiality, or a blind submission to the direction or opinion of judges; one such failure of a jury, may occasion the ruin of many of the best or greatest families in England: I mention this extent of the grand juries power over all the nobility, only to shew their joint interest and concern with the commons of England in this antient institution.

The grand juries are trusted to be the principal means of preserving the peace of the whole kingdom, by the terror of executing
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the penal laws against offenders, by their wisdom, diligence, and faithfulness in making due inquiries after all breaches of the peace, and bringing every one to answer for his crime, at the peril of his life, limb, and estate ; that every man, who lives within the law, may sleep securely in his own house.

It is committed to their charge and trust, to take care of bringing capital offenders to pay their lives to justice, and lesser criminals to other punishments, according to their several demerits. The courts, or judges, or commissioners of oyer and terminer, and of gaol delivery, are to receive only from the grand inquest, all capital matters whatsoever, to be put in issue, tried and judged before them by the petit juries. The whole stream of justice, in such cases, either runs freely, or is stopped and disturbed, as the grand inquests do their duties, either faithfully and prudently, or neglect or omit them.

And as one part of their duty is to indict offenders, so another part is to protect the innocent, in their reputations, lives and interests, from false accusers, and malicious conspirators : they are to search out the truth of such informations as come before them, and to reject the indictment if it be not sufficiently proved ; and farther, if they have reasonable suspicion of malice, or wicked designs against any man's life or estate, by such as offer a bill of indictment ; the laws of God and of the kingdom, bind them to use all possible means to discover the villany ; and if it appear

to them (whereof they are the legal judges) to be a conspiracy, or malicious combination against the accused, they are bound by the highest obligations upon men and christians, not only to reject such a bill of indictment, but to indict forthwith all the conspirators with their abettors and associates.

Doubtless there hath been pride and covetousness, malice and desire of revenge in all ages, from whence have sprung false accusations and conspiracies; but no age before us ever hatched such villanies, as the popish faction have contrived against our religion, lives, and liberties. No history affords an example of such forgeries, perjuries, subornations, and combinations of infamous wretches, as have been lately discovered amongst them, to defame loyal, innocent protestants, and to shed their guiltless blood in the form and course of justice, and to make the king's most faithful subjects appear to be the vilest traitors unto him. In this our miserable state, grand juries are our only security, inasmuch as our lives cannot be drawn into jeopardy by all the malicious crafts of the devil, unless such a number of our honest countrymen shall be satisfied in the truth of the accusations. For prevention of such plotters of wickedness as now abound, was that statute made in the forty-second of Edward 3. 3. in these words: " To eschew
 " the mischiefs and damage done to divers of
 " the commons by false accusers, which of-
 " tentimes have made the accusations more
 " for revenge and singular benefit, than for the
 " profit

“ profit of the king, or of his people ; which
 “ accused persons, some have been taken, and
 “ sometimes caused to come before the king’s
 “ council by writ, and otherwise, upon
 “ grievous pain, against the law ; it is assent-
 “ ed and accorded for the good government
 “ of the commons, that no man be put to an-
 “ swer without presentment before justices,
 “ or matter of record, &c. according to the
 “ old law of the land, and if any thing be
 “ done to the contrary, it shall be void in law,
 “ &c.” And (saith the statute of the twenty-
 fifth of Edward 3. 4.) “ None shall be taken
 “ by petition, or suggestion made to the king
 “ or to his council, unless it be by indictment,
 “ or presentment of good and lawful people
 “ of the same neighbourood where such deeds
 “ be done, &c.” That is to say, by a grand
 jury.

All our lives are thus by law trusted to the
 care of our grand inquests, that none may be
 put to answer for their lives, unless they indict
 them. If a causless indictment of any man
 should carelessly pass from them, his guiltless
 blood, or what prejudice soever the accused
 should thereby suffer, must rest upon them,
 who by breach of their trust were the occasi-
 ons of it ; their fault cannot be excused by the
 prosecution of an attorney, or solicitor gene-
 ral, or any other accuser, if it were in their
 power to be more truly informed in the case.
 Whatsoever prevents not an evil when he may,
 consents to it.

Now to oblige these juries to the more con-
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scientific care, to indict all that shall appear to them criminal, and to save every innocent, if it may be, from unjust vexation and danger, by malice and conspiracy, our ancestors appointed an oath to be imposed upon them, which cannot be altered, except by act of parliament: therefore every grand-jury man is sworn, as the foreman, in the words following, *viz.*

“ You shall diligently inquire, and true
 “ presentment make of all such articles, mat-
 “ ters and things as shall be given you in
 “ charge. And of all other matters and things
 “ as shall come to your own knowledge,
 “ touching this present service. The king’s
 “ counsel, your fellows, and your own, you
 “ shall keep secret: you shall present no per-
 “ son for hatred or malice; neither shall you
 “ leave any one unpresented for favour, or
 “ affection, for love, or gain, or any hopes
 “ thereof; but in all things you shall present
 “ the truth, the whole truth, and nothing
 “ but the truth, to the best of your knowledge;
 “ so help you God.” The tenor of the oath
 is plain, saving in these words, “ All such
 “ matters and things as shall be given you
 “ in charge:” But whensoever a general com-
 mission of oyer and terminer is issued, all ca-
 pital offences are always the principal matters
 given in charge to the grand jury, which is
 enough for the present discourse of their
 duty. Hence then it evidently appears, that
 every grand jury is bound to enquire diligent-
 ly after the truth of every thing, for which
 they

they shall indict or present any man: they are not only bound, by the eternal law of loving their neighbour, to be as tender of the life and good name of every man, as of their own, and therefore to take heed to the truth in accusing or indicting any man; but their express oath binds them to be diligent in their inquiries, that is, to receive no suggestion of any crime for truth, without examining all the circumstances about it, that fall within their knowledge; they ought to consider the first informers, and enquire as far as they can into their aims and pretences in their prosecutions: if revenge or gain should appear to be their ends, there ought to be the greater suspicion of the truth of their accusations; the law intending all indictments to be for the benefit of the king and of his people, as appears by the statute of forty-second Edward 3. 3. Next, the jury are bound to inquire into the matters themselves, whereof any man is accused, as to the time, place, and all other circumstances of the fact alledged. There have been false informers, that have suggested things impossible; for instance, that thirty thousand men in arms were kept in readiness for an exploit, in a secret place, as if they could have been hid in a chamber or a cabinet. The jury ought also to inquire after the witnesses, their condition and quality, their fame and reputation, their means of subsistence, and the occasion whereby the facts whereof they bear witness came to their knowledge. Sometimes persons of debauched lives, and low condition, have deposed

posed discourses, and treasonable counsels, against persons of honour and virtue, so unlikely to come to their knowledge, (if such things had been) that their pretence of being privy to them, was a strong evidence that their whole story was false and feigned. It is also agreeable unto our antient law and practice, and of great consequence in cases of treason or felony, that the jury inquire after the time, when first the matters deposed came to the witnesses knowledge, and whether they pursued the directions of the law in the immediate discovery and pursuit of the traitor or felon, by hue and cry, or otherwise, or how long they concealed the same; their testimony being of little or no value, if they have made themselves partakers of a crime by their voluntary concealment.

Neither may the jury lawfully omit to inquire concerning the parties accused, of their quality, reputation, and the manner of their conversation, with many other circumstances; from whence they may be greatly helped to make right inferences of the falshood, or truth of the crimes whereof any man shall be accused. The jury ought to be ignorant of nothing whereof they can inquire, or be informed, that may in their understandings enable them to make a true presentment or indictment of the matters before them.

When a grand jury is sworn to inquire diligently after all treasons, &c. it is natural and necessary to their business, to think of whom they should inquire; and it is plainly
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and easily resolved, that they ought to inquire of every man that can or will inform them ; and if any kind of treason be suggested to them, to have been done by any man, or number of men, their duty is the same in that particular, as it was in the general ; that is, to seek diligently to find the truth. It is certainly inconsistent with their oaths, to shut their ears against any lawful man, that can tell them any thing relating unto a crime in question before them : no man will believe, nor can they themselves think that they desire to find and present the truth of a fact, if they shall refuse to hear any man, who shall pretend such knowledge of it, or such material circumstances, as may be useful to discover it ; whether that which shall be said by the pretenders, will answer the juries expectations, must rest in their judgments, when they have heard them. It seems therefore from the words of the oath, that there is no bound or limit set (save their own understanding or conscience) to restrain them to any number or sort of persons of whom they are bound to inquire ; they ought first and principally to inquire of one another mutually, what knowledge each of them hath of any matters in question before them ; the law presumes, that some at least of so many sufficient men of a county, must know or have heard of all notable things done there against the public peace ; for that end, the juries are by the law to be of the neighbourhood to the place where the crimes are committed.

mitted. If the parties, and the facts whereof they are accused, be known to the jury, or any of them, their own knowledge will supply the room of many witnesses. Next they ought to inquire of all such witnesses as the prosecutors will produce against the accused, they are bound to examine all fully and prudently to the best of their skill ; every jurymen ought to ask such questions (by the foreman at least) as he thinks necessary to resolve any doubt that may arise in him, either about the fact, or the witnesses, or otherwise ; if the jury be then doubtful, they ought to receive all such further testimony as shall be offered them, and to send for such as any of them do think able to give testimony in the case depending.

If it be asked how, or in what manner, the juries shall inquire ; the answer is ready, According to the best of their understandings. They only, not the judges, are sworn to search diligently to find out all treasons, &c. within their charge, and they must and ought to use their own discretion in the way and manner of their inquiry : no directions can legally be imposed upon them by any court, or judges ; an honest jury will thankfully accept good advice from judges, as they are assistants ; but they are bound by their oaths to present the truth, the whole truth, and nothing but the truth, to the best of their own, not the judges, knowledge : neither can they, without breach of that oath, resign their consciences, or blindly submit to the dictates of others ; and
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therefore ought to receive, or reject such advices, as they judge them good or bad.

If the jury suspect a combination of witnesses against any man's life, (which perhaps the judges do not discern) and think it needful to examine them privately and separately, the discretion of the juries in such a case, is their only, best, and lawful guide; though the example of all ages and countries, in examining suspected witnesses privately and separately, may be a good direction to them.

Nothing can be more plain and express, than the words of the oath are to this purpose. The jurors need not search the law books, nor tumble over heaps of old records, for the explanation of them. Our greatest lawyers may from hence learn more certainly our antient law in this case, than from all the books in their studies. The language wherein the oath is penned is known and understood by every man, and the words in it have the same signification, as they have wheresoever else they are used. The judges (without assuming to themselves a legislative power) cannot put a new sense upon them, other than according to their genuine, common meaning. They cannot magisterially impose their opinions upon the jury, and make them forsake the direct words of their oath, to pursue their glosses. The grand inquest are bound to observe alike strictly every part of their oath; and to use all just and proper ways which may enable them fully to perform it; otherwise it were to say, that after men had sworn to in-

quire diligently after the truth, according to the best of their knowledge, they were bound to forsake all the natural and proper means which their understandings suggest for the discovery of it, if it be commanded by the judges.

And therefore, if they are jealous of a combination of the witnesses, or that corruption and subornation hath been made use of, they cannot be restrained from asking all such questions, as may conduce to the sifting out of the truth, nor from examining the witnesses privately and separately; lest (as Fortescue says) the saying of one should provoke or instruct others to say the like*.

Nor are the jury tied up to inquire only of such crimes as the judges shall think fit to give them directly in charge, much less of such bills only as shall be offered to them; but their inquiry ought to extend to all other matters and things which shall come to their knowledge, touching the present service. If they have ground to suspect that any accusation before them proceeds from a conspiracy, they are obliged by their oaths to turn the inquiry that way, and if they find cause, not only to reject the bills offered upon such testimony, but to indict such witnesses, and all the abettors of their villany.

They are carefully to examine what sort of men the witnesses are; for it is a rule in all laws, that *Turpes à tribunalibus arcentur*, vile persons ought to be rejected by courts of jus-

* Fortesque de Laud. Leg. Ang. cap. 26,

tice. Such witnesses would destroy justice, instead of promoting it. And the grand jury are to take care of admitting such : they may and ought (if they have no certain knowledge of them) to ask the witnesses themselves of their condition, and way of living, and all other questions, which may best inform them what sort of men they are. It is true, it may be lawful for the witnesses, in many cases, to refuse to give answer to some demands which the jury may make ; as where it would be to accuse themselves of crimes : but yet that very refusal, or avoiding to give direct answers, may be of great use to the jury, whose only business is to find out the truth ; and who will be in a good measure enabled to judge of the credit of such witnesses, as dare not clear themselves of crimes, which common fame or the knowledge of some of the grand inquest has charged them with.

If the witnesses which come before the grand jury upon an indictment for treason, should discover upon their examination, that they concealed it a long time without just impediment ; the presumption of law will be strong against them, that no sense of honesty or of their duty brought them at last to reveal it.

It appears by Bracton*, that antient writers of our laws, that in cases of treason the juries were in his days advised (as now they ought)

* Bracton, l. 3. c. 3. *Non morari debet, &c. nec debet ad aliqua negotia, quamvis urgentissima, se convertere, quia vix permittitur ei quod retro aspiciat, &c. Si post intervallum accusare velit, non erit de jure audiendus.*

to be so severe in their inquiry within what time the witnesses discovered the treason after it came to their knowledge ; that if it were not evident that they revealed it with as much expedition as was well possible for them, they were not by law to be heard as witnesses : it was scarce permitted them (saith he) to look back in their going ; such ought to be their speed to make known the treason. Or if in any case they be otherwise openly flagitious, though they be not legally infamous, or if they are men of desperate fortunes, so that the temptation of want is manifestly strong upon them, and the restraint of conscience can be supposed to be little or none at all ; whatever they say is, at least, to be heard with extraordinary caution, if not totally rejected. In Scotland *, such a degree of poverty, that a witness cannot swear himself to be worth ten pounds, is sufficient to lay him aside wholly in these high concernments of criminal cases : and in some other kingdoms, to be a loose liver, is an objection of the same force, against any produced for witnesses.

And for the better discovery of the truth of any fact in question, the credit of the witnesses, and the value of the testimonies ; it is the duty of the grand inquest to be well informed concerning the parties indicted ; of their usual residence, their estates and manner of living, their companions and friends, with whom they are accustomed to converse, such knowledge being necessary to make a

* Sir G. Mackenzie, *Crim. Law*, lib. 26. cap. 3.

good judgment upon most accusations ; but most of all in suspicions, or indictments of secret treasons, or treasonable words, where the accusers can be of no credit, if it be altogether incredible that such things as they testify should come to their knowledge.

Sometimes the quality of the accused person may set him at such a distance from the witnesses, that he cannot be supposed to have conversed with them familiarly, if his wisdom and conduct has been always such, that it is not credible he would trust men so inconsiderable, or meer strangers to him, and such as are wholly incapable to assist in the design which they pretend to discover.

Can the grand inquest believe such testimony to be of any value ? Or can they avoid suspecting malice, combination, and subornation in such a case ? Or can they shew themselves to be just, and conscientious in their duty, if they do not suspend their verdict until further inquiry, and write *ignoramus* on the bill ?

It is undoubtedly law which we find reported in *Stiles* *, that *though there be witnesses who prove the bill, yet the grand inquest is not bound to find it, if they see cause to the contrary.*

Now to make their inquiry more instrumental and advantageous to the execution of justice, they are enjoined by their oath to keep secret *the king's counsel, their fellows, and their own.* Perhaps it is not sufficiently

* *Stiles*, Repor. 11.

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understood or considered, what duty is enjoined to every man of a grand inquest by this clause of their oath, being seldom (if ever) explained to them in the general charge of the judges at sessions or assizes : but it is necessary that they should apprehend what counsel of the king is trusted with them. Certainly there is or ought to be much more of it communicated to them, than is commonly thought, and in things of the greatest consequence. To them ought to be committed in the several counties where any prosecutions are begun, the first informations and suspicions of all treasons, murders, felonies, conspiracies, and other crimes, which may subvert the government, endanger or hurt the king, or destroy the lives or estates of the innocent people, or any way disquiet or disturb the common peace. Our law intends the counsels of the king to be continually upon the protection and security of the people, and prevention of all their mischiefs and dangers by wicked, lawless, and injurious men. And in order thereunto, to be advising how to right his wronged subjects in general, if the public safety be hazarded by treasons of any kind ; or their relations snatcht from them by murderers, or any way destroyed by malicious conspirators in form of law ; or their estates taken away by robbery and thieves, or the peace broken. And for these ends to bring to exemplary justice all offenders, to deter others from the like wickedness. And until these counsels of the king come to
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the grand jury, he can bring no such criminals to judgment, or to answer to the accusations and suggestions against them. Hence it becomes unavoidably necessary to reveal to the grand juries all that hath been discovered to the king, or any of his ministers, judges, or justices, concerning any treasons, or other offences, whereof any man is accused. And where suspicion hath caused any to be imprisoned, all the grounds of their suspicions ought to be opened, concerning the principals and the accessories, as well before as after the fact, all the circumstances and presumptions that may induce a belief of their guilt, and all notices whatsoever, which may enable the jury to make a more exact and effectual inquiry, and to present the whole truth. They themselves will not only be offenders against God by reason of their oath, but subject to legal punishments, if they knowingly conceal any criminals, and leave them unrepresented; and none can be innocent, who shall conceal from them any thing that may help and assist them in their duty.

The first notices of crimes or suspicions of the criminals, by whomsoever brought in, and the intentions of searching them out, and prosecuting them legally, are called the king's counsel; because the principal care of executing justice is entrusted to him, and they are to be prosecuted at his suit, and in his name; and such proceedings are called Pleas of the Crown. From hence may be easily concluded, that the king's counsel, which,

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by the oath of the grand inquest, is to be kept secret, includeth all the persons offered to them to be indicted, and all the matters brought in evidence before them, all circumstances whatsoever whereof they are informed, which may any way conduce to the discovery of offences ; all intimations given them of abettors and encouragers of treasons, felonies, or perjuries and conspiracies, or of the receivers, harbourers, nourishers, and concealers of such criminals.

Likewise the oath, which enjoins the counsel of their fellows, and their own to be kept, implies, that they shall not reveal any of their personal knowledge concerning offences or offenders ; nor their intentions to indict any man thereupon ; nor any of the proposals and advices amongst them of ways to inquire into the truth of any matter before them, either about the crimes themselves, or the accusers and witnesses, or the party accused, nor the debates thereupon amongst themselves, nor the diversity of opinions in any case before them.

Certainly this duty of secrecy concerning the King's counsel was imposed upon the grand inquest with great reason, in order to the public good. It was intended that they should have all the advantages which the several cases will afford, to make effectual inquiries after criminals, to offer them to justice. If packs of thieves, private murderers, secret traitors, or conspirators and suborners, can get intelligence of all that is known of their villanies,

villanies, all the parties concerned may consult together, how to hide their crimes, and prevent such further inquiries as can be made after them ; they may form sham stories by agreement, that may have appearance of truth to mislead and delude the jury in their examination, and avoid contradicting each other ; they may remove or conceal all such things as might occasion a fuller discovery of their crimes, or become circumstantial evidences against any of their associates, if one or more of them be known or taken, or is to be indicted. There hath been confederates in high crimes, who have secured themselves from the justice done upon some of their companions, by their confident appearance and denial of the fact, having been emboldened therein from their knowledge of all the grounds of suspicion, and all the witnesses examined about them, and the matter of their testimonies. It is too well known what helps of discovering the whole Popish plot were lost, through the want of keeping secret the king's counsel therein, before the matter was brought either to the parliament, or to any grand inquest ; and thereby they were disabled for the effectual execution of their offices, and could never search into the bowels of that dangerous treason in any county. But our law having placed this great trust of inquiry in the prudence and faithfulness of the grand inquest, was careful that they might not disable themselves for their own trust, by the indiscretion or worser fault of any of their

own number, in revealing the king's counsel or their own.

And as it was intended hereby to preserve unto them all reasonable helps for their bringing to light the hidden mischiefs that might disturb the common peace, so it was necessary to prevent the flight of criminals; if the evidence against one that is accused should be publickly known, whether it should be sufficient for an indictment of him, and how far it extends to others; his confederates and accomplices might easily have notice of their danger, and take opportunity to escape from justice.

Yet the reason will be still more manifest for keeping secret the accusations and the evidence by the grand inquest, if it be well considered, how useful and necessary it is for discovering truth in the examinations of witnesses in many, if not in most cases that may come before them; when if by this privacy witnesses may be examined in such manner and order, as prudence and occasion direct; and no one of them be suffered to know who hath been examined before him, nor what questions have been asked him, nor what answers he hath given, it may probably be found out whether a witness hath been biased in his testimony by malice or revenge, or the fear or favour of men in power, or the love or hopes of lucre and gain, in present or future, or promises of impunity for some enormous crime.

The simplicity of truth in a witness may appear by the natural plainness, easiness, and direct-

directness of his answers to whatsoever is propounded to him, by the equality of his temper, and suitableness of his answers to questions of several kinds, and perhaps to some that may be asked for trial-sake only of his uprightness in other matters. And the falseness, malice, or ill design of another, may be justly suspected from his studiousness and difficulty in answering, his artifice and cunning in what he relates, not agreeable to his way of breeding and parts; his reserved, indirect, and evasive replies to easy questions; his pretences of doubtfulness and want of remembering things of such short dates, or such notoriety, that it is not credible he could be ignorant or forgetful of them. In this manner the truth may be evidenced to the satisfaction of the jurors consciences, by the very demeanor of the witnesses in their private examinations, inasmuch as the greatest certainty doth often arise from the careful observation and comparing of such minute matters; of which a distinct account is not possible to be given to a court: and for that reason (among others) the juries are made the only absolute judges of their evidence.

Yet further, their private examinations may discover truth out of some disagreement of the witnesses, when separately interrogated, and every of the grand inquest asks them questions for his own satisfaction about the matters which have come to his particular knowledge, and this freely, without awe or control of judges, or distrust of his own parts,

parts, or fear to be checked for asking impertinent questions.

Conspiracies against the lives of the innocent, in a form of justice, have been frequently detected by such secret and separate examination of witnesses. The story of Susanna is famous; that two of their elders, and judges of great credit and authority, testified in the open assembly a malicious invention against her, with all the solemnity used in capital cases, and sentence of death passed upon her, and was ready to be executed, had not wise Daniel cried out in her behalf*:
 “ Are ye such fools, O Israelites, that without examination, or knowledge of the truth, ye have condemned a daughter of Israel? Return (said he) again to judgment, and put these two one far from another, and I will examine them:” And being asked separately (though in public, the testimony having been so given before) concerning the place of the fact then in question, they had not agreed upon that circumstance, as they had upon their story; and so their falshood became manifest, one saying the adultery was committed under a *lentisk* tree, the other, it was under a *prime* tree: and upon that conviction of the false witnesses, the whole assembly cried with a loud voice, and praised God. These false witnesses were put to death, as their law required.

* Note, that the testimony given in the assembly without separating the witnesses, and trying the truth by circumstances, was esteemed no examination or knowledge of the truth,

We have also a late instance of the usefulness of private and separate examinations, in the case of the Lord Howard, against whom the attorney general prosecuted an accusation of treason the last Midsummer term, before the grand inquest for Middlesex. Mrs. Fitz-Harris, and Teresa Peacock her maid, swore words of treason against him positively, and agreed in every point whilst they were together : but by the prudence of the inquest, being put asunder, and the mistress asked how her maid came to be admitted to the knowledge of such matters ; she had an evasion ready, pretending her maid had craftily hearkened behind a wainscot door, and so heard the treason. But the maid not suspecting what her mistress had said, continued in her first story, that she heard the treason from the Lord Howard himself, and was as much entrusted by him as her mistress : by this circumstance the falshood and perjury (which Mrs. Fitz-Harris hath since acknowledged) was discovered ; and the snare for the life of the injured Lord was broken, as is manifest by his liberty now obtained by law.

Witnesses may come prepared, and tell plausible stories in open court, if they know from the prosecutor to what they must answer ; and have agreed and acquainted each other with the tales they will tell, and have resolved to be careful, that all their answers to cross interrogatories, may be conformable to their first stories : and if these relate only to words spoken at several times in private to distinct witnesses,

witnesses, in such a case, evidence, if given in open court, may seem to be very strong against the person accused, though there be nothing of truth in it. But if such witnesses were privately and separately examined by the grand inquest, as the law requires, and were to answer only such questions as they thought fit, and in such order as was best in their judgments, and most natural to find out the truth of the accusation, so that the witnesses could not guess what they should be asked first, or last, nor one conjecture what the other had said, (which they are certain of when they know beforehand what the prosecutor will ask in court of every one of them, and what they have resolved to answer) if the inquest should put them out of their road, and then compare all their several answers together, they might possibly discern marks enough of falshood, to shew that their testimonies ought not to be depended upon, where life is in question.

By what is now said, the reasonableness of this institution of secrecy may be discerned in respect to the discovery of truth, and the protection of the innocent from malicious combinations and perjuries. Yet the same secrecy of the king's counsel is no less necessary to reserve the guilty for punishment ; when the evidence against any party accused is not manifest and full, it may be kept without prejudice under secrecy until further inquiry ; and if sufficient proof can afterwards be made of the offence, an indictment may be found

found by a grand inquest, and the party brought to answer it : but when the examinations are in open court, or the king's counsels any other way divulged, and the evidence is weak, and less than the law requires, it is not probable that it will be more or stronger; and should an indictment be found, and the party tried by a petit jury, whilst the evidence is not full, they must and ought to acquit him, and then the further prosecution for the same offence is for ever barred, though his guilt should afterward be manifest, and confessed by himself.

From hence may certainly be concluded, that secrecy in the examinations and inquiries of grand juries is in all respects for the interest and advantage of the king. If he be concerned to have secret treasons, felonies, and all other enormities brought to light, and that none of the offenders should escape justice; if the gain of their forfeitures be thought his interest (which God forbid) then the first notices of all dangerous crimes, and wicked confederacies, ought to be secretly and prudently pursued and searched into by the grand inquest : the accusers and witnesses ought not to publish in a court, before a multitude, what they pretend to know in such cases, until the discretion of so many honest men of the neighbourhood, hath first determined whether their testimony will amount to so good and full evidence, that it may be made public with safety to the king and people in order to justice. Else they are obliged by oath

to lock up in their own breasts all the circumstances and presumptions of crimes, until they, or such as shall succeed in the same trust, shall have discovered (as they believe) evidence enough to convict the accused, and then, and not before, they are to accuse the party upon record, by finding the bills, as it is usually called. But when bills are offered without satisfactory evidence, and they neither know nor can learn any more, they ought, for the king's sake, to indorse *ignoramus* upon them, lest his honour and justice be stained, by causing or permitting such prosecution of his people in his own name, and at his suit, as shall appear upon their trial and acquittal to have been frivolous, or else malicious designs upon their lives and fortunes.

If it should be said, that whatsoever reasons there are for this oath of secrecy ; yet it cannot deprive the king of the benefit of having the evidence made public, if he desires it, and that the grand jury do not break their oaths when the king, or the prosecutor for him, will have it so : it is not hard to shew that such notions have no foundation in law or reason, and seem to come from men who have not well studied the first principles of the English government, or of true religion.

Whosoever hath learnt, that the kings of England were ordained for the good government of the kingdom in the execution of the laws, must needs know, that the king cannot lawfully seek any other benefit in judicial proceedings, than that common right and
justice

justice be done to the people according to their laws and customs. Their safety and prosperity are to be the objects of his continual care and study, that being their highest concern. The greatness and honour of a prince consists in the virtue, multitude, wealth and prowess of his people; and his greatest glory is, by the excellence of his government so to have encouraged virtue and piety, that few or no criminals are to be found in his dominions. Those who have made this their principal aim, have in some places so well succeeded, as to introduce such a discipline and rectitude of manners, as rendered every man a law unto himself. As it is reported in the history of Peru *, that though the laws were so severe as to make very small crimes capital, yet it often fell out, that not one man was put to death in a year, within the whole compass of that vast empire.

The king's only benefits in finding out and punishing offenders by courts of justice, are the preservation and support of the government, the protection of the innocent, revenging their wrongs, and preventing further mischiefs by the terrors of exemplary punishments.

The king is the head of justice in the esteem of our laws, and the whole kingdom is to expect right to be done them in his several courts instituted by law for that purpose. Therefore writs issue out in his name in all cases where relief is sought by the subjects: and the wrongs

* *Gar. de la Vega. Hist. de los Incas.*

done to the lives or limbs of the people, are said to be done against the peace of the king, his crown and dignity, reckoning it a dishonour to him and his government, that subjects should not, whilst they live within the law, enjoy peace and security. It ought to be taken for a scandal upon the king, when he is represented in a court of justice as if he were partially concerned, or rather inclined to desire, that a party accused should be found guilty, than that he should be declared innocent, if he be so in truth. Doubtless the king ought to wish in all inquiries made after treasons, felonies, &c. that there were none to be found in his kingdom; and that whosoever is accused, might be able to answer so well and truly for himself, as to shew the accusation to be erroneous or false, and to be acquitted of it. Something of this appears in the common custom of England, that the clerks of the king's courts of justice, when any man hath pleaded not guilty to an indictment, pray forthwith that God would send him a good deliverance.

The destruction of every criminal is a loss to a prince, and ought to be grievous to him; in the common regard of humanity, and the more particular relation of his office, and the name of father. The king's interest and honour is more concerned in the protection of the innocent, than in the punishment of the guilty. This maxim can never run them into excesses; for it hath ever been looked upon as a mark of great wisdom and virtue in some princes

princes and states, upon several occasions, to destroy all evidences against delinquents; and nothing is more usual than to compose the most dangerous distempers of nations by acts of general amnesty, which were utterly unjust, if it were as great a crime to suffer the guilty to escape, as to destroy the innocent. We do not only find those princes represented in history under odious characters, who have basely murdered the innocent; but such as by their spies and informers were too inquisitive after the guilty: whereas none was ever blamed for clemency, or for being too gentle interpreters of the laws. Though Trajan was an excellent prince, endowed with all heroical virtues, yet the most eloquent writers, and his best friends, found nothing more to be praised in his government, than that in his time, all men might think what they pleased, and every man speak what he thought; and he had no better way of distinguishing himself from his wicked predecessors, than by hanging up the spies and informers, whom they had employed for the discovery of crimes*. But if the punishment of offenders were as universally necessary as the protection of the innocent, he were as much to be abhorred as Nero; and that clemency which is so highly praised, were to be looked upon as the worst of vices, and those who have hitherto been taken for the best of princes, were altogether as detestable as the worst.

Moreover, all human laws were ordained for

* *Tacit. lib. 1. Hist.*

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the preservation of the innocent, and for their sakes only are punishments inflicted. That those of our own country do solely regard this, was well understood by Fortescue*, who saith, " Indeed I could rather wish twenty evil-doers " to escape death through pity, than one man " to be unjustly condemned." Such blood hath cried to heaven for vengeance against families and kingdoms, and their utter destruction hath ensued. If a criminal should be acquitted by too great lenity, caution, or otherwise, he may be reserved for future justice from man or God, if he doth not repent; but it is impossible that satisfaction or reparation should be made for innocent blood, shed in the forms of justice.

Without all question, the king's only just interest in the evidence given against the party accused, and in the manner of taking it, is to have the truth made manifest, that justice may thereupon be done impartially: and if accusations may be first examined in secret more strictly and exactly, to prevent fraud and perjury, than is possible to be done in open court, (as hath before appeared) then it is for the king's benefit to have it so. And nothing done in, or by a court, about the trial of the accused, is for the king, (in the sense of our law) unless it some way conduce to justice in the case. The witnesses which the prosecutor brings, are no farther for the king, than they tell the truth and the whole truth, impartially; and by whomsoever any others may

* *Fortesc. de Laud Leg. Ang.* ch. 27.

be called upon the inquiry, or the trial to be examined, if they sincerely deliver the truth of the matter in question, they are therein the king's witnesses, though the accused be acquitted by reason of their testimonies. If such as are offered by the attorney-general to prove treason against any man, shall be found to swear falsely, maliciously, or for reward or promises, though they depose positively facts of treason against the accused, yet they are truly and properly witnesses against the king, by endeavouring to pervert justice, and destroy his subjects: their malice and villany being confessed or proved, the king's attorney ought (*ex officio*) to prosecute them in the king's name, and at his suit, for their offences against him in such depositions pretended to have been for him: and the legal form of the indictment ought to be for their swearing falsely and maliciously against the peace of the king, his crown and dignity. The prosecutors themselves, notwithstanding their big words, and assuming to themselves, to be for the king, if their prosecution shall be proved to be malicious, or by conspiracy against the life or fortune of the abused, they are therein against the king, and ought to be indicted at the king's suit, for such prosecutions done against his crown and dignity. And if an attorney-general should be found knowingly guilty of abetting such a conspiracy, his office could not excuse or legally exempt him from suffering the villainous judgement, to the destruction of him and his family. It is esteemed in the law

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one of the most odious offences against the king to attempt in his name to destroy the innocent for whose protection he himself was ordained. Queen Elizabeth had the true sense of our law, when the Lord Burleigh, upon Sir Edward Coke her then attorney's coming into her presence, told her, this is he who prosecutes *pro domina regina*, for our lady the queen; and she said she would have the form of the records altered; for it should be *Attornatus generalis qui pro domina veritate sequitur**; The attorney-general who prosecutes for our lady the truth. Whoever is trusted in that employment, dishonours his master and office, if he gives occasion to the subjects to believe that his master seeks other profits or advantages by accusations, than the common peace and welfare: he ought not to excite a jealousy in any of their minds, that confiscations of estates are designed or desired by any of the king's ministers; whosoever makes such advantages to the crown their principal aim in accusing, are either robbers and murderers, (in the scripture sense) in seeking innocent blood for gain, or in the mildest construction, (supposing the accusation to be on good grounds) they shew themselves to be of corrupt minds and a scandal to their master and the government. Profit or loss of that kind ought to have no place in judicial proceedings against suspected criminals, but truth is only to be regarded; and for this reason the judgments given in courts of human institution,

* Coke, *Inst.* 3d part, p. 79.

are in scripture called, the judgments of God, who is the God of truth.

Yet further, if any benefit to the king could be imagined by making the evidence to the grand jury public, it could not come in competition with the law expressed in their oath; which by constant uninterrupted usage, for so many ages, hath obtained the force of law. Bracton and Briton, in their several generations bear witness, that it was then practised; and greater proof of it need not be sought, than the disputes that appear by the law-books to have been amongst the antient lawyers, whether it was treason or felony for a grand jury to discover, either who was indicted, or what evidence was given them. The trust of the grand juries was thought so sacred in those ages, and their secrecy of so great concern to the kingdom, that whosoever should break their oath therein, was by all thought worthy to die; only some would have had them suffer as traitors, others as felons *. And at this day it is held to be a high misprision, punishable by fine and imprisonment. The law then having appointed the evidence to be given to grand juries in secret, the king cannot desire to have it made public. He can do no wrong saith the old maxim; that is, he can do nothing against the law, nor is any thing to be judged for his benefit that is not warranted by law; his will, commands, and desires, are therein no otherwise to be known: he cannot change the legal method or manner of

* Coke, *Instit.* 3d part, p. 107.

inquiring by juries, nor vary in any particular case from the customary and general forms of judicial proceedings; he can neither abridge nor enlarge the power of juries, no more than he can lessen the legal power of the sheriffs or judges, or by special directions order the one how they shall execute writs, and the other how they shall give judgments, though these made by himself.

It is criminal, no doubt, for any to say, that the king desires a court of justice, or a jury, to vary from the direction of the law, and they ought not to be believed therein: if letters, writs, or other commands should come to the judges for that purpose, they are bound by their oaths not to regard them, but to hold them for null; the statutes of 2 Ed. III. 8. and 20 Ed. III. 1. are exprefs; that if any writs or commandments come to the justices in disturbance of the law, or the execution of the same, or of right to the parties, they shall proceed as if no such letters, writs or commands were come to them: and the substance of these and other statutes, is inserted into the oath taken by every judge; and if they be under the most solemn and sacred tie in the execution of justice, to hold for nothing or none the commands of the king under the great seal; surely the word or desire of an attorney-general in the like case ought to be less than nothing.

Besides, they are strangely mistaken, who think the king can have an interest different from, or contrary unto that of the kingdom,
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in the prosecution of accused persons: his concerns are involved in those of his people; and he can have none distinct from them. He is the head of the body politic, and the legal course of doing justice, is like the orderly circulation of blood in the natural bodies, by which both head and body are equally preserved, and both perish by the interruption of it.

The king is obliged to the utmost of his power to maintain the law, and justice in its due course, by his coronation oath, and the trust thereby reposed in him. In former ages he was conjured not to take the crown, unless he resolved punctually to observe it. Bromton and others speaking of the coronation of Richard I, deliver it thus; that having first taken the oath, *Deinde indutus mantello, ductus est ad altare, & conjuratus ab archiepiscopo, & prohibitus ex parte Dei, ne hunc honorem sibi assumat, nisi in mente habeat tenere sacramenta & vota quæ superius fecit. Et ipse respondit, se per Dei auxilium omnia supradicta observaturum bona fide. Deinde cepit coronam de altari, & tradidit eam archiepiscopo, qui posuit eam super caput regis, & sic coronatus rex, ductus est ad sedem suam* *. Afterward, cloathed with the royal robe, he is led to the altar, and conjured by the Archbishop, and forbid in the name of God, not to assume that honour, unless he intended to keep the oaths and vows he had before made; and he answered, by God's help he would faithfully

* Bromton, p. 1159. Mat. Paris, p. 153. Hoved. p. 374. Baker, p. 68.

observe all the premises: and then he took the crown from off the altar, and delivered it to the archbishop, who put it upon the king's head; and the king thus crowned, is led unto his seat. The violation of which trust cannot but be as well a wound unto their consciences, as bring great prejudice upon their persons and affairs.

The common law that exacts this, doth so far provide for princes, that having their minds free from cares of preserving themselves, they may rest assured that no acts, words or designs, that may bring them into danger, can be concealed from the many hundreds of men, who by the law are appointed in all parts of the kingdom, watchfully to take care of the king; and are so far concerned in his safety, that they can hope no longer to enjoy their own lives and fortunes in peace, than they can preserve him, and the good order which according to the laws he is to uphold.

It is the joint interest of king and people, that the antient rules of doing justice be held sacred and inviolable; and they are equally concerned in causing strict inquiries to be made into all evidences given against suspected or accused persons, that the truth may be discovered; and such as dare to disturb the public peace by breaking the laws, may be brought to punishment. And the whole course of judicial proceedings in criminal causes, shews that the people is therein equally concerned with the king, whose name is used. This is the ground of that distinction which Sir Ed.

Edward Coke makes between the proceedings in pleas of the crown, and actions for wrongs done to the king himself. " In pleas
 " of the crown, or other common offences,
 " nuisances, &c. principally concerning others,
 " or the public, there the king by law must
 " be apprised by indictment, presentment,
 " or other matter of record; but the king
 " may have an action for such wrong as is
 " done to himself, and whereof none other
 " can have an action but the king, without
 " being apprised by indictment, presentment,
 " or other matter of record, as a *Quare im-*
 " *pedit*, *Quare incumbravit*, a Writ of Attaint
 " of Debt, Detinue of Ward, Escheat, Scire
 " fac. pur repealer patent *," &c. Unto
 which every man must answer: but no man
 can be brought to answer for public crimes
 at the king's suit, otherwise than by indictment of a grand jury.

The whole course of doing justice upon criminals, from the beginning of the process, unto the execution of the sentence, is, and ever was esteemed to be the kingdom's concernment, as is evidenced by the frequent complaints made in parliament, that capital offenders were pardoned to the people's damage and wrong. In the 13 Richard II. it is said, that the king hearing the grievous complaints of his commons in parliament, of the outrageous mischiefs which happened unto the realm, for that treasons, murders, and rapes of women, be commonly done, and commit-

* Coke, 3d Instit. page 136.

ted,

ted, and the more, because charters of pardon had been easily granted in such cases; and thereupon it was enacted, that no pardon for such crimes should be granted, unless the same were particularly specified therein: and that if a pardon were otherwise granted for the death of a man, the judges should notwithstanding inquire by a grand jury of the neighbourhood concerning the death of every such person, and if he were found to have been wilfully murdered, such charter of pardon to be disallowed; and provisions were made by imposing grievous fines upon every person, according to his degree and quality, or imprisonment, who should presume to sue to the king for any pardons of the aforesaid crimes: and that such persons might be known to the whole kingdom, their names were to be upon several records. The like had been done in many statutes made by several parliaments, as in 6 Ed. I. 9. the 2 Ed. III. 2. the 10 Ed. III. 2. and the 14 Ed. III. 15. wherein it was acknowledged by the king in parliament; “ That the oath of the crown
 “ had not been kept, by reason of the grant
 “ of pardons contrary to the aforesaid statutes;
 “ and enacted, that any such charter of par-
 “ don, from thenceforth granted against the
 “ oath of his crown and the said statutes,
 “ the same should be holden for none.” In the 27 Ed. III. 2. It is further provided, for preventing the people’s damage by such pardons; “ That from thenceforth in every char-
 “ ter of pardon of felony, which shall be
 “ granted

“ granted at any man’s suggestion, the said
 “ suggestion, and the name of him that mak-
 “ eth the suggestion, shall be comprised in
 “ the same charter; and if after the same
 “ suggestion be found untrue, the charter
 “ shall be disallowed and holden for none:
 “ and the justices before whom such charter
 “ shall be alledged, shall inquire of the same
 “ suggestion, and that as well of charters
 “ granted before this time, as of charters
 “ which shall be granted in time to come,
 “ and if they find them untrue, then they
 “ shall disallow the charter so alledged, and
 “ shall moreover do as the law demand-
 “ eth.”

Thus have parliaments from time to time
 declared, that the offences against the crown
 are against the public welfare, and that kings
 are obliged by their oath and office to cause
 justice to be done upon traitors and felons, for
 the kingdom’s sake; according to the antient
 common law declared by *Magna Charta* in
 these words : *Nulli negabimus, nulli vendemus,*
nulli differemus justitiam *. We will sell no
 man, we will not deny or defer to any man
 either justice or right.

And as the public is concerned, that the due
 and legal methods be observed in the prosecu-
 tion of offenders, so likewise doth the security
 of every single man in the nation depend upon
 it: no man can assure himself he shall not be
 accused of the highest crimes. Let a man’s
 innocence and prudence be what it will, yet

* 9 Hen. 3 29.

his most inoffensive words and actions are liable to be misconstrued, and he may, by subornation and conspiracy, have things laid to his charge, of which he is no ways guilty. Who can speak or carry himself with that circumspection, as not to have his harmless words or actions wrested to another sense than he intended? who can be secure from having a paper put into his pockets, or laid in his house, of which he shall know nothing till his accusation? History affords many examples of the detestable practices in this kind of wicked court parasites, among which one may suffice for instance, out of Polybius, an approved author *. “ Hermes, a powerful favourite under Antiochus the younger, but a man noted to be a favourer of liars, was made use of against the innocent and brave Epigenes: he had long watched to kill him, for that he found him a man of great eloquence and valour, having also favour and authority with the king: he had unjustly but unsuccessfully accused him of treason, by false glosses put upon his faithful advice given to the king in open council; this not prevailing, he by artifice got him put out of his command, and to retire from court; which done, he laid a plot against him, with the help and counsel of (one of his accomplices) Alexis, and writing letters as if they had been sent from Molon, (who was then in open rebellion against his prince, for fear, amongst other reasons, of the cruelty and treachery of Hermes)

* Polybius, lib. 5.

“ and corrupted one of Alexis’s servants with
 “ great promises, who went to Epigenes, to
 “ thrust the letters secretly amongst his other
 “ writings, which when he had done, Alexis
 “ came suddenly to Epigenes, demanding of
 “ him, if he had received any letter from Mo-
 “ lon: and when he said he had none, the other
 “ said, he was confident he should find some;
 “ wherefore entering the house to search, he
 “ found the letters, and taking this occasion,
 “ slew him, [lest if the fact had been duly ex-
 “ amined, the conspiracy had been discovered.]
 “ These things happening thus, the king
 “ thought that he was justly slain; in this man-
 “ ner the worthy Epigenes ended his days: but
 “ this great man’s designs did not rest here; for
 “ within a while, heightened with success, he
 “ so arrogantly abused his master’s authority, as
 “ he grew dangerous to the king himself, as
 “ well as those about him; insomuch as Anti-
 “ ochus was forced, for that he hated and fear-
 “ ed Hermes, to take away his life by strata-
 “ gem, thereby to secure himself.” By these,
 and a thousand other ways, the most unblemish-
 ed innocence may be brought into the greatest
 dangers. Since then every man is thus easily
 subject to question, and what is one man’s case
 this day, may be another man’s to morrow, it
 is undoubtedly every man’s concern, to see (as
 far as in him lies) in every case that the accused
 person may have the benefit of all such provisi-
 ons, as the law hath made for the defence of
 innocence and reputation.

Now to this end there is nothing so neces-

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fary as the secret and separate examination of witnesses; for though perhaps, as hath already been observed, it may be no very difficult thing for several persons, who are permitted to discourse with each other freely, and to hear, or be told what each of their fellows had been asked, and answered, to agree in one story; especially if the jury may not ask what questions they shall think fit for the satisfaction of their own consciences; but that they shall be so far under the correction and censure of the judges, as to have the questions which they put called by them trifles, impertinent, and unfit for the witnesses to speak to: yet if they be examined apart, with that due care of sifting out all the circumstances which the law requires, where every man of the jury is at full liberty to inquire into any thing for his clearer information, and that with what deliberation they think fit; and all this be done with that secrecy which the law commands; it will be almost impossible for a man to suffer under a false accusation.

Nor has the law been less careful for the reputation of the subjects of England, than for their lives and estates; and this seems to be one reason why, in criminal cases, a man shall not be brought to an open legal trial by a petit jury, till the grand jury have first found the bill. The law having intrusted the grand inquest in a special manner with their good names; they are therefore not only to inquire whether the fact that is laid, was done by the party accused, but into the circumstances

stances thereof too, whether it were done traitorously, feloniously, or maliciously, &c. according to the manner charged: which circumstances are not barely matter of form, but do constitute the very essence of the crime: and, lastly, into the credit of the witnesses, and that of the party accused. And unless they find both the fact proved upon him, and strong presumptions of such aggravating circumstances attending it, as the law requires in the specification of such crime; and likewise are satisfied in the credibility of the witnesses; they ought not to expose the subject to an open trial in the face of the county, to a certain loss of his reputation, and hazard of his life and estate. Moreover, should this practice of public examination prevail, and the jurors oath of secrecy continue, how partial and unequal a thing would it be to declare that to all the world, which will blast a man's good name, and religiously conceal what they may know tending to his justification? to examine witnesses, perhaps suborned, certainly prepared, and have evidence dressed up with all the advantages that lawyers wits can give it, of the foulest crimes a man can be guilty of, and this given before some thousands against him, and yet for the same court to swear those, whom the law makes judges in the case, not to reveal one word of those reasons, which have satisfied their consciences of his innocence? what is this, but an artifice of slandering men, it may be, of the most unspotted conversation, and of abusing authority, not so much to find men

guilty, as to make them infamous? after this ignominy is fixed, what judgment can the auditors, and from them the world, make, but of high probability of guilt in the party accused, and perjury in the jury?

This course, if it should be continued, must needs be of most dangerous consequence to all sorts of men: it will both subject every one without relief to be defamed, and fright the best and most conscientious men from serving on grand juries, which is a most necessary part of their duty.

Now since there is in our government, as in every one that is well constituted there ought to be, great liberty of accusation, that no man may be encouraged to do ill through hopes of impunity, if by this means a method be opened for the blasting the most innocent man's honour, and deterring the most honest from being his judges, what remains, but that every man's reputation, which is most dear unto such as are good, is held precariously, and it will be in the power of great men to pervert the laws, and take away whose life and estate they please; or at least to fasten imputations of the most detested crimes upon any, whom for secret reasons they have a mind to defame? the consequences of which scandal, as they are very mischievous to every man, so in a trading country in a more especial manner, to all who live by any vocation of that kind.

The greatest part of trade is driven upon credit; most men of any considerable employment dealing for much more than they are
truly

truly worth; and every man's credit depends as well upon his behaviour to the government he lives under, as upon his private honesty in his transactions between man and man; so that the suspicion only of his being obnoxious to the government, is enough to set all his creditors upon his back, and put a stop to all his affairs, perhaps to his utter ruin. What expedition and violence will they all use to recover their debts, when he shall be publicly charged with such crimes, as forfeit life and estate? though there should not be one word of the accusation true, yet they knowing the charge, and the seeming proofs in the court and the consequences of it, and not being acquainted with the truth, as it appears to the jury, self-interest will make his creditors to draw in their effects; which is no more than a new contrivance, under colour of law, of undoing honest men.

If to prevent any of these mischiefs, the jury should discover their fellows and their own counsel, as the court by public examination doth, it would not only be a wilful breach of their oath, but a betraying of the trust which the law has reposed in them, for the security of the subject. For to subject the reasons of their verdicts upon bills to the censure of the judges, were to divest themselves of the power which the law has given them, for most important considerations, without account or control; and to interest in it, whom the law has not in this case trusted, and so by degrees, the course of justice in one of the
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most material parts may be changed, and a fundamental security of our liberty and property insensibly lost. On the other hand, if for fear of being unworthily reproached as *ignoramus* jurymen, obstinate fellows that obstruct justice, and disserve the king, the grand jury shall suffer the judges, or the king's counsel, to prevail with them to indorse *Billa vera*, when their consciences are not satisfied in the truth of their accusation, they act directly against their oaths, oppress the innocent, whom they ought to protect, and, as far as in them lies, subject their country, themselves and posterity, to arbitrary powers; pervert the administration of justice, and overthrow the government, which is instituted for the obtaining of it, and subsists by it.

This seems to be the greatest treason that can be committed against the whole kingdom, and threatens ruin unto every man in private in it. No one can be safe against authorised malice; and, notwithstanding the care of our ancestors, rapine, murder, and the worst of crimes, may be advanced by the formality of verdicts, if grand juries be over-awed, or not suffered to inquire into the truth, to the satisfaction of their consciences. Every man, whilst he lives innocently, doth, under God, place his hopes of security in the law, which can give no protection, if its due course be so interrupted, that frauds cannot be discovered: witnesses may as well favour offenders, as give false testimony against the guiltless, and if they by hearing what each other saith, are put in-

to a way of concealing their villainous designs, there can be no legal revenge of the crimes already committed. Others by their impunity will be encouraged to do the like: and every quiet-minded person will be equally exposed unto private injuries, and such as may be done unto him, under the colour of law. No man can promise unto himself any security for his life or goods: and they who do not suffer the utmost violences in their own persons, may do it in their children, friends and nearest relations, if he be deprived of the remedies that the law ordains, and forced to depend upon the will of a judge, who may be (and perhaps we may say are) too often corrupted, or swayed by their own passions, interests, or the impulse of such as are greater than they. This mischief is aggravated by a commonly received opinion, that whosoever speaks against an accused person is the king's witness; and the worst of men, in their worst designs, do usually shelter themselves under that name; whereas he only is the king's witness, who speaks the truth, whether it be for or against him that is accused. As the power of the king is the power of the law, he can have no other intention than that of the law, which is to have justice impartially administered: and as he is the father of his people, he cannot but incline ever to the gentlest side, unless it be possible for a father to delight in the destruction, or desire to enrich himself by the confiscation of his children's estates. If the most wicked princes have had different thoughts, they

they have been obliged to dissemble them. We know of none worse than Nero; but he was so far from acknowledging, that he desired any man's condemnation, that he looked upon the necessity of signing warrants for the execution of malefactors, as a burden, and rather wished he had not learnt to write, than to be obliged to do it *. They who by spreading such barbarous errors, would create unto the king an interest different from that of his people which he is to preserve, whilst they pretend to serve him in destroying of them, they deprive him of his honour and dignity; justice is done in all places, in the name of the chief magistrate; it being presumed that he doth embrace every one of his subjects with equal tenderness, until the guilty are by legal proofs discriminated from the innocent; and amongst us the king's name may be used in civil cases, as well as criminal: but it is as impossible for him rightly to desire I should be condemned for killing a man whom I have not killed, or for a treason that I have not committed, as that my land should be unjustly taken from me by a judgment from his bench, or I should be condemned to pay a debt that I do not owe.

In both cases we sue unto him for justice, and demand it as our right. We are all concerned in it, publicly and privately; and the king as well as all the officers of justice, are by their several oaths, obliged in their respective capacities to perform it. They are

* Sen. Vit. Ner. *Utinam nescirem literas.*

bound to give their assistance to find out offenders; and the king's attorney is by his oath to prosecute them, if he be required. And he is not only the king's servant in such cases, but the nation's; or rather, cannot otherwise serve the king, than by seeing justice done in the nation.

Whensoever any man receives an injury in his person, wife, children, friends or goods, the king is injured; inasmuch as he is by his office to prevent such mischief, and ought to be concerned in the welfare of every one of his subjects; but the parties to whom the injuries are done, are the immediate sufferers, and the prosecution is principally made, that they may be repaired or revenged, and other innocent persons secured by the punishment of offenders, in which the king can be no otherwise concerned than as he is to see his office faithfully performed, and his people protected. The king's suit therefore is in the behalf of his people; yet the laws leave unto every man a liberty, in case of treasons, murders, rapes, robberies, &c. to sue in the king's name, and crave his aid; or by way of appeal, in his own. The same law looks upon felons, or traitors, as public enemies; and by authorizing every one to pursue and apprehend them, teacheth us, that every man, in his place, ought to do it. The same act whereby one, or a few are injured, threatens all; and every man's private interest so concurs with that of the public, that all depends upon the exact preservation of

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the method prescribed by the law, for the impartial inquisition after suspected offenders, and most tender care of preserving such as are innocent. As this cannot possibly be effected without secret and separate examinations, the forbidding of them is no less than to change the course which is enjoined by law, confirmed by custom, and grounded upon reason and justice.

If, on the other side, any man believe, that such as in the king's name prosecute suspected delinquents, ought only to try how they may bring them to be condemned, he may be pleased to consider, that all such persons ought, according unto law, to produce no witness whom they do not think to be true; no evidence, which they do not believe good; nor can conceal any thing that may justify the accused. No trick or artifice can be lawfully used to deceive a grand jury, or induce them to find or reject a bill, otherwise than as they are led by their own consciences.

All lawyers were antiently sworn to put no deceit upon the courts for their client's sake; and there are statutes still in force to punish them if they do it. But there is an eternal obligation upon such as are of counsel against persons accused of crimes, not to use such arts as may bring the innocent to be condemned; and thereby pervert that, which is not called the judgment of man, but of GOD: because man renders it in the stead and by the commandment of GOD. Such practices do not exalt the jurisdiction of tribunals; but infect
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and pollute them with that innocent blood, which will be their overthrow. And least of all can it be called a service to the king; since none could ever stand against the cry of it. This is necessarily implied in the attorney-general's oath, to serve the king in his kingly office, wherein the law presumes he can do no wrong. But the greatest of all wrong, and that which hath been most destructive unto thrones, is by fraud to circumvent and destroy the innocent. This is to turn a legal king into a Nimrod, a hunter of men. This is not to act the part of a father or a shepherd, who is ready to lay down his life for his sheep; but such as the psalmist complains of, " who eat up the people as if they eat bread." Jezebel did perhaps applaud her own wit, and think she had done a great service to the king, by finding out men of Belial, judges and witnesses, to bring Naboth to be stoned: but that unregarded blood was as a canker, or the plague of leprosy, in his throne and family, which could not be cured but by its overthrow and extinction. But if the attorney-general cannot serve the king by abusing juries, and subverting the innocent, he can as little gain an advantage to himself by falsifying his oath; by the true meaning whereof he is to prosecute justice impartially: and the eternal divine law would annul any oath or promise that he should have taken to the contrary, even though his office had obliged him unto it.

The like obligation lies upon jurors not to suffer themselves to be deluded or persuaded,

that the judges, king's counsel, or any others can dispense with that oath, or any part of it, which they have taken before God unto the whole nation; nor to think that they can swerve from the rules set by the law without a damnable breach of it. The power of releasing or dissolving conscientious obligations, acknowledged in the pope, makes a great part of the Roman superstition; and that grand impostor could never corrupt kingdoms and nations to their destruction, and the establishment of his tyranny, until he had brought them to believe he could dispense with oaths, taken by kings unto their subjects, and by subjects to their kings; nor impose so extravagant an error upon either, until he had persuaded them he was in the place of God. It is hard to say, how the judges or king's counsel can have the same power, unless it be upon the same title; but we may be sure they may as well dispense with the whole oath as any part of it, and can have no pretence unto either, unless they have the keys of heaven and hell in their keeping: it is in vain to say, the king as any other man may remit the oath taken unto and for himself; he is not a party for himself, but in the behalf of his people, and cannot dispose of their concerns without their consent, which is given only in parliament.

The king's counsel ought to remember, they are in criminal cases of counsel unto every man in the kingdom. It is no ways referred unto the direction of the judges, or unto them,
whether

whether that secrecy enjoined by law, be profitable unto the king or kingdom; they must take the law as it is, and render obedience unto it, until it be altered by the power that made it. To this end the judges, by acts of parliament, *viz.* 18 Ed. III. cap. 8. and 20 Ed. III. cap. 1. are sworn to serve the people, “ Ye
 “ shall serve our lord the king and his people
 “ in the office of justice, &c. ye shall deny to
 “ no man common right by the king’s letters,
 “ nor no other man’s, nor for no other cause;
 “ and in default thereof in any point, they are
 “ to forfeit their bodies, lands and goods.” This proves them to be the people’s servants as well as the king’s.

Further, by the express words of the commissions of oyer and terminer, they are required to “ assist every man that suffers injury, and
 “ make diligent inquisition after all manner of
 “ falsehoods, deceits, offences and wrongs done
 “ to any man, and thereupon to do justice according to the law.” So that in the whole proceedings in order unto trial, and in the trials themselves, the thing principally intended, which several persons are severally in their capacities obliged to pursue, is, the discovery of truth: the witnesses are to depose “ the
 “ truth, the whole truth, and nothing but the
 “ truth:” thereupon the counsel for the king are to prosecute: the grand jury to present: and the petit jury to try. These are several offices, but all to the same end. It is not the prisoner, but the crime that is to be pursued; this primarily, the offender but by consequence;
 and

and therefore such courses must be taken, as may discover that, and not such as may insnare him. When the offence is found, the impartial letter of the law gives the doom; and the judges have no share in it, but the pronouncing of it: till then the judges are only to preside, and take care that every man else, who is employed in this necessary affair, do his duty according to law. So that upon the result of the whole transaction, impartial justice may be done, either to the acquittal, or condemnation of the prisoner.

Hereby it is manifest why the judges are obliged by oath, to “ serve the people as well as the king:” and by commission, to “ serve every one that suffers injuries.” As they are to see that right be done to the king, and his injured subjects in discovering of the delinquent; so they are to be of counsel with the prisoner, whom the law supposeth may be ignorant as well as innocent; and therefore has provided, that the court shall be of counsel for him, and as well inform him of what legal advantages the law allows him, as to resolve any point of law when he shall propose it to them. And it seems to be upon the presumption of this steady impartiality in the judges, (thus obliged by all that is held sacred before God and man to be unbiassed) that the prisoner hath no counsel; for if the court faithfully perform their duty, the accused can have no wrong or hardship, and therefore needs no adviser.

Now

Now suppose a man perfectly innocent, and in some measure knowing in the law, should be accused of treason or felony; if the judges shall deny unto the grand jury the liberty of examining any witnesses, except in open court, where nothing shall be offered that may help to clear the prisoner, but every thing aggravated, that gives colour for the accusation; such persons only produced, as the king's counsel, or the prosecutors shall think fit to call, of whose credit also the jury must not inquire, but shall be controlled and brow-beaten in asking questions of such unknown witnesses for their own satisfaction, if they have any tendency to discover the infamy of these witnesses, or the falshood of their testimony; how can innocence secure any man from being arraigned?

And if the oath of the judges should be as much forgotten in the farther proceedings upon the trial, where in cases of treason the prisoner shall have all the king's counsel (commonly not the most unlearned) prepared with studied speeches, and arguments to make him black and odious, and to strain all his words, and to alledge them for instances of his guilt: if then all his private papers, and notes to help his memory in his plea and defence, shall be taken from him by the gaoler, or the court, and given to his prosecutors; and all advice and assistance from counsels or friends, and his nearest relations, shall be denied him, and none suffered by word or writing to inform him of the indifferency, or honesty,

neſty, or the partiality or malice of the panels returned (whom the law allows him to challenge or reſuſe, either peremptorily or for good reaſons offered;) ſhould he be thus deprived of all the good provisions of the law for his ſafety, to what frauds, perjuries, and ſubornations is not he, and every man expoſed, who may be accuſed? What deceits may there not be put upon juries? And what probability is there of finding ſecurity in innocence? What an admirable execution would this be of their commiſſion, to “ make diligent inquiry after all manner of falſhoods, deceits, wrongs and frauds, and thereupon to do juſtice according to law;” when at the ſame time, if ſo managed, a method would be introduced of ruining and deſtroying any man in the form of juſtice? Such practices would be the higheſt diſhonour to the king imaginable, whoſe name is uſed, and ſo far miſrepreſent the kingly office, as to make that appear to have been erected to vex and deſtroy the people, which was intended and ordained to help and preſerve them.

The law ſo far abhors ſuch proceedings, that it intends, that every man ſhould be ſtrictly bound to be exactly juſt, in their ſeveral employments, relating to the execution of juſtice. The ſerjeant of the king’s counſel, Sir George Jeffreys, amongſt the reſt, who proſecute in the king’s name, and are conſulted in the forming bills of indictment, and adviſe about the witneſſes, and their teſtimonies againſt the accuſed; theſe, if they

would remember it, when they are made serjeants, take an oath, Coke's 2d *Institute*, page 214. " as well and truly to serve the " people," whereof the party accused is one, " as the king himself; and to minister the " king's matters duly and truly after the " course of the law to their cunning ;" not to use their cunning and craft to hide the truth, and destroy the accused if they can.

They are also obliged by the Statute of *Westm.* 1. cap. 29. to put no manner of deceit or collusion upon the king's court, nor secretly to consent to any such tricks as may abuse or beguile the court, or the party, be it in causes civil or criminal : and it is ordained, that if any of them be convicted of such practices, he shall be imprisoned for a year, and never be heard to plead again in any court ; and if the mischievous consequence of their treacheries be great, they are subject to farther and greater punishments. Our antient law book, called *the Mirror of Justice*, cap. 2. sect. 4. says, " That every serjeant pleader " is chargeable by his oath, not to maintain " or defend any wrong or falshood to his " knowledge, but shall leave his client " when he shall perceive the wrong intended " by him : also that he shall not move or " proffer any false testimony, nor consent to " any lies, deceits or corruptions whatsoever " in his pleadings."

As a farther security unto the people against all attempts upon their laws, exemplary justice hath been done, in several ages, upon

such judges, and justiciaries, as through corruption, submission unto unjust commands, or any other sinister consideration, have dared to swerve from them: the punishments of these wicked men remain upon record, as monuments of their infamy, to be a terror unto all that shall succeed them. In the reign of the Saxons, the most notable example was given by king Alfred, who caused above forty judges to be hanged in a short space, for several wrongs done to the people, as is related in *the Mirror of Justice*: some of them suffered for imposing upon juries, and forcing them to give verdicts according to their will; and one, as it seems, had taken the confidence to examine a jury, that he might find which of them would submit to his will, and setting aside him who would not, condemned a man upon the verdict of eleven.

Since the coming in of the Normans, our parliaments have not been less severe against such judges as have suffered the course of justice to be perverted, or the rights and liberties of the people to be invaded: in the time of Edward the First, *Anno* 1289, the parliament finding, that all the judges, except two, had swerved from their duty, condemned them to several punishments according unto their crimes; as banishment, perpetual imprisonment, or the loss of all their estates*, &c. Their particular offences are specified in a speech made by the archbishop of Canterbury in parliament. They had broken *Magna*

* *Ex Chron. Anno 10 Ed. I. ad finem*

Charta ; incited the king against his people ; violated the laws, under pretence of expounding them ; and impudently presumed to prefer their own counsels to the king, before the advices of parliament ; as appears by the speech, &c. thereunto annexed.

The like was done in the time of Edward II. when Hugh de Spencer was charged for having prevailed with the king to break his oath to the people, in doing things against the law by his own authority.

In Edward the Third's time, judge Thorpe was hanged, for having in the like manner brought the king to break his oath. And the happy reign of that great king * affords many instances of the like nature ; among which, the punishment of Sir Henry Green, and Sir William Skipworth, deserve to be observed, and put into an equal rank with those of his brave and victorious grandfather.

In Richard the Second's time, eleven of the judges, forgetting the dreadful punishments of their predecessors †, subscribed malicious indictments, against law ; and gave false interpretations of our antient laws to the king, thereby to bring many of his most eminent and worthiest subjects to suffer as traytors at his will ; subjected the authority, and very being of parliaments to his absolute pleasure ; and made him believe, that all the laws lay in his own breast. Hereupon sentence of

* Daniel's *History*, page 260, 261.

† See all the English Histories of *Walsingham*, *Fabian*, *Speed*, &c. in the eleventh and twelfth years of Richard II.

death passed upon them; and though upon their repentance, and confessing they had been swayed by fear and threatenings from the king, two only were executed; all the others were for ever banished, as unworthy to enjoy the benefit of that law, which they had so perfidiously and basely betrayed.

It were an endless work to recite all the examples of this kind that are to be found in our histories and records; but that of Empson and Dudley must not be omitted: they had craftily contrived to abolish grand juries, and to draw the lives and estates of the people into question, without indictments by them; and by surprize, and other wicked practices, they gained an act of parliament for their countenance. Hereupon false accusations followed without number: oppression and injustice broke forth like a flood. And to gain the king's favour, they filled his coffers. The indictments against them, mentioned in Anderson's *Reports*, p. 156, 157. are worth reading; whereby they are charged "with
 " treason, for subverting the laws and customs
 " of the land, in their proceedings without
 " grand juries; and procuring the murmur-
 " ing and hatred of the people against the
 " king; to the great danger of him and the
 " kingdom." Nothing could satisfy the kingdom, though the king was dead whom they had flattered and served, but such justice done upon them, and many of their instruments and officers, as may for ever make the ears of judges to tingle.

And

And it is not to be forgotten, that the judges in queen Elizabeth's time, in the case of R. Cavendish, in Anderson's *Reports*, page 152, and 155. "were," as they told the queen and her counsellors, "by the punishment of former judges, especially of Empson and Dudley, deterred from obeying her illegal commands." The queen had sent several letters under her signet ; great men pressed them to obey her patent under the great seal ; and the reasons of their disobedience being required ; they answered, " That the queen herself, and the judges also, had taken an oath to keep the laws ; and if they should obey her commands, the laws would not warrant them, and they should therein break their oath, to the offence of God, and their country, and the commonwealth wherein they were born. And, say they, if we had no fear of God, yet the examples and punishments of others before us, who did offend the laws, do remember, and recal us from the like offences."

Whosoever, being in the like places, may design, or be put upon the like practices, will do well to consider these examples, and not to think that he, who obliquely endeavours to render grand juries useless, is less criminal than he that would absolutely abolish them. That which doth not act according to its institution, is as if it were not in being. And whoever doth without prejudice consider this matter, will see that it is not less pernicious to deny juries the use of those methods of discovering

discovering truth, which the law hath appointed ; and so by degrees turn them into a meer matter of form, than openly and avowedly to destroy them. Surely, such a gradual method of destroying our native right is the most dangerous in its consequence. The safety which our forefathers for many hundreds of years enjoyed, under this part of the law especially, and have transmitted to us, is so apparent to the meanest capacity, that whoever shall go about to take it away, or give it up, is like to meet with the fate of Ishmael, to have every man's hand against him, because his is against every man. Artifices of this kind will ruin us more silently, and so with less opposition, and yet as certainly as the other more open oppression. This only is the difference, that one way we should be slaves immediately, and the other insensibly : but with this farther disadvantage too, that our slavery would be the more unavoidable, and the faster riveted upon us, because it would be under colour of law, which practice in time would obtain.

Few men at first see the danger of little changes in fundamentals ; and those who design them, usually act with so much craft, as besides the giving specious reasons, they take great care that the true reason shall not appear. Every design therefore of changing the constitution ought to be most warily observed, and timely opposed. Nor is it only the interest of the people, that such fundamentals should be duly guarded, for whose benefit they were at first so carefully laid, and whom

whom the judges are sworn to serve ; but of the king too, for whose sake those pretend to act, who would subvert them.

Our kings, as well as judges, are sworn to maintain the laws : they have themselves, in several statutes, required the judges, at their peril, to administer equal justice to every man, notwithstanding any letters or commands, &c. even from themselves to the contrary. And when any failure hath been, the greatest and most powerful of them have ever been the readiest to give redress. It appears by the preface to the statutes of the twentieth of Edward the III^d, that the judicial proceedings had been perverted ; that letters, writs, and commands had been sent from the king and great men to the justices ; and that persons belonging to the court of the king, the queen, and the prince of Wales, had maintained and abetted quarrels, &c. whereby the laws had been violated, and many wrongs done. But the king was so far from justifying his own letters, or those illegal practices, that the preamble of those statutes saith, they were made for the relief of the people in their sufferings by them. That brave king, in the height of his glory, and vigour of his age, chose rather to confess his error, than to continue in it ; as is evident by his own words : — “ Edward, by the grace of God, “ &c. Because by divers complaints made “ unto us, we have perceived that the law of “ the land, which we by our oath are bound “ to maintain, is the less well kept, and execution

“ cution of the same disturbed many times by
 “ maintainances and procurements, as well
 “ in the court as the country, we, greatly
 “ moved of conscience in this matter, and
 “ for this cause, desiring as much for the
 “ pleasure of GOD, and ease and quietness of
 “ our subjects, as to save our conscience, and
 “ for to save and keep our said oath, by the
 “ assent, &c. enact, That judges shall do
 “ justice, notwithstanding writs, letters, or
 “ commands from himself, &c. and that
 “ none of the king’s house, or belonging to
 “ the king, queen, or prince of Wales, do
 “ maintain quarrels, &c.”

King James, in his speech to the judges in
 the Starchamber, in the year 1616, told them,
 “ That he had after many years resolved to re-
 “ new his oath, made at his coronation, con-
 “ cerning justice, and the promise therein
 “ contained for maintaining the law of the
 “ land.” And in the next page save one says,
 “ I was sworn to maintain the law of the
 “ land, and therefore had been perjured if I
 “ had broken it : GOD is my judge, I never
 “ intended it.” And his majesty that now
 is, hath made frequent declarations and pro-
 testations, of his being far from all thoughts
 of designing an arbitrary government ; and
 that the nation might be confident he would
 rule by law.

Now if after all this, any officer of the
 king’s should pretend instructions from his
 master, to demand so material an alteration
 of proceedings, in the highest cases against
 law,

law, as are above mentioned ; and the court (who are required to slight and reject the most solemn commands under the great seal, if contrary to law) should upon a verbal intimation allow of such a demand, and so break in upon this bulwark of our liberties, which the law has erected ; might it not give too just an occasion to suspect, that all the legal securities of our lives and properties are unable to protect us ? And may not such fears rob the king of his greatest treasure and strength, the people's hearts, when they dare not rely upon him in his kingly office and trust, for safety and protection by the laws ? Our English history affords many instances of those that have pretended to serve our king in this manner, by undermining the people's rights and liberties, whose practices have sometimes proved of fatal consequence to the kings themselves, but more frequently ended in their own destruction.

But after all, imagining it could be made out that this method of private examination by a grand jury, (which, from what has been said before, hath appeared to be so extremely necessary for the public good, and to every private man's security) were inconvenient, or mischievous, and therefore fit to be changed ; yet being so essential a part of the common law, it is no otherwise alterable than by act of parliament. We find by precedents, that the bare forms of indictments could not be reformed by the judges. The words *Depopulatores agrorum, insidiatores viarum, Vi &*
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Armis,

Armis, Baculis, Cultellis, Arcubus & Sagittis, could not be left out but by advice of the kingdom in parliament. A writ issued in the time of king Edward III. giving power to hear and determine offences, and all the justices resolved, (Coke's 4th *Inst.* p. 164.)
 “ That they could not lawfully act, having
 “ their authority by writ, where they ought
 “ to have had it by commission : though it
 “ was in the form and words that the legal
 “ commission ought to be. John Knivett,
 “ chief justice, by advice of all the judges,
 “ resolved that the said writ was *contra legem*.
 “ and where divers indictments were before
 “ them found against T. S. the same, and all
 “ that was done by colour of that writ, was
 “ damned.”

If in such seeming little things as these, and many others that may be instanced, the wisdom of the nation hath not thought fit to intrust the judges, but reserved the consideration of them to the legislative power ; it cannot be imagined, that they should subject to the discretion and pleasure of the judges, those important points in the established course of administering justice, whereupon depends the safety of all the subjects lives and fortunes. If judges will take upon themselves to alter the constant practice, they must either alter the oath of the grand jury, or continue it ; if they should alter it, so as to make it fail with any such new method, and thus in appearance charitably provide that the grand jury should not take a mock oath, or forswear themselves;
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they then make an incroachment upon the authority of parliaments, who only can make new, or change old legal oaths, and all the proceedings thereupon would be void.

If they should continue constantly to impose the same oath, as well when they have notice from the king, that the jury shall not be bound to keep his secrets and their own, as when they have none; they must assume to make the same form of law to be of force, and no force; and the same words to bind the conscience, or not bind it, as they will have them: whereby they would profane the natural religion of an oath, and bring a foul scandal upon christianity, by trifling in that sacred matter worse than heathens. And whilst the judges find themselves under the necessity of administering the oath unto grand juries, and not suffer them to observe it according to their consciences, they would confess the illegality of their own proceedings, and can never be able to repair the breaches by pretending a tacit implication if the king will; but must unavoidably fall under that approved maxim of our law, *Maledicta est interpretatio quæ corrum-pit textum*: It is a cursed interpretation that dissolves a text.

There are two vulgar errors concerning the duty of grand juries, which, if not removed, will in time destroy all the benefit we can expect from that constitution, by turning them into a mere matter of form, which were designed for so great ends. Many have of late thought, and affirmed it for law, that the grand

jury is neither to make so strict inquiry into matters before them, nor to look for so clear evidence of the crime, as the petit jury ; but that of their presentments, being to pass a second examination, they ought to indict upon a superficial inquiry and bare probabilities : whereas should either of these opinions be admitted, the prejudice to the subject would be equal to the total laying aside grand juries. There being in truth no difference between arraigning without any presentment from them at all, and their presenting upon slight grounds.

For the first, that grand juries ought not to make so strict inquiry, it were to be wished, that we might know how it comes to pass, that an oath should be obligatory upon a petit jury, and not unto the grand ; or in what points they may lawfully, and with good conscience, quit that exactness : whether in relation to the witnesses and their credibility ; or the fact and all its circumstances ; or the testimony and its weight ; or, lastly, in reference to the prisoner, and probability of his guilt ; and withal, upon what grounds of law or reason their opinion is founded. On the contrary, he that will consider either the oath they take or the commission, where their duty is described, will find in all points, that there lies an equal obligation upon them and the petit juries.

They swear “ diligently to inquire, and
 “ true presentment make, &c. and to present
 “ the truth, the whole truth, and nothing but
 “ the truth,” &c. And in the commission of
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oyer and terminer, their duty, with that of the commissioners, is thus described; “to inquire by the oath of honest and lawful men, &c. by whom the truth of the matter may be best known, of all manner of treasons, &c. confederacies, false testimonies, &c. as also the accessories, &c. by whomsoever or howsoever done, perpetrated or committed, by whom or to whom, how, in what way, or in what manner. And of other articles and circumstances premised, and of any other thing or things howsoever concerning the same.” Now for any man after this to maintain, that grand juries are not to inquire, or not carefully, is as much as in plain terms to say, they are bound to act contrary to the commission and their oath: and to affirm that they can discharge their duty according to the obligations of law and conscience, which they lie under, without a strict inquiry into particulars, is to affirm that the end can be obtained without the means necessary to it.

The truth is, that grand juries have both a larger field for their inquiry, and are in many respects better capacitated to make a strict one, than the petit juries: these last are confined as to the person and the crime, specified in the indictment; but they are at large obliged to search into the whole matter, that any ways concerns every case before them, and all the offences contained in it, all the criminal circumstances whatsoever, and into every thing, howsoever concerning the same. They are bound

bound to inquire whether their informations of suspected treasons or felonies, brought by accusers, be made by conspiracy, or subornation; who are the conspirators, or false witnesses; by whom abetted, or maintained; against whom, and how many, the conspiracy is laid; when, and how, and in what course it was to have been prosecuted.

But none of these most intricate matters (which need the most strict and diligent inquiries) can come under the cognisance of the petit jury; they can only examine so much, as relates to the credit of those witnesses brought to prove the charge against the parties indicted; wherein also they have neither power, nor convenient time to send for persons, or papers, if they think them needful, nor to resolve any doubts of the lawfulness, and credibility of the testimonies.

Yet further, if the crimes objected are manifest, it is then the grand jury's duty to inquire after all the persons any ways concerned in them, and the several kinds of offences, whereof every one ought jointly, or separately to be indicted as they shall discover them to have been principals, or accessories, parties or privy thereunto, or to have comforted, or knowingly relieved either the traitors or felons, or concealed the offences of others: but the inquiry into all these matters, which require all possible strictness in searching, as being of the highest importance unto the public justice and safety, is wholly out of the power and trust of the petit juries. The guilt or innocence

cence of the parties put upon their trials, and the evidence thereof given, are the only objects of their inquiries. It is not their work, nor within their trust, to search into the guilt, or crimes of the parties, whom they try; they are bound to move within the circle of the indictment made by the grand jury, who are to appoint, and specify the offences, for which the accused shall be tried by the petit jury.

When a prosecutor suggests that any man is criminal, and ought to be indicted, it belongs to the grand jury to hear all the proof he can offer, and to use all other means they can, whereby they may come to understand the truth of the suggestion, and every thing or circumstance that may concern it; then they are carefully to examine the nature of the facts, according unto the rules of the common law, or the express words of the statutes, whereby offences are distinguished, and punishments allotted unto each of them: it is true, that upon hearing the party, or his witnesses, the petit jury may acquit or judge the facts in the indictment to be less heinous, or malicious, than they were presented by the grand jury, but cannot aggravate them; which being considered, it will easily appear, by the intent and nature of the powers given unto grand juries, that they are by their oaths obliged, and their institution, ordained to keep all injustice from entering the first gates of our courts of judicature, and to secure the innocent not only from punishment, but from all disgrace, vexation, expence or danger.

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To understand our law clearly herein, the jurors must first know the lawful grounds whereupon they may and ought to indict, and then what truly and justly ought to be taken for the ground of an indictment. The principal and most certain is the jurors personal knowledge, by their own eyes or ears, of the crimes whereof they indict: or so many pregnant concurring circumstances, as fully convince them of the guilt of the accused: when these are wanting, the depositions of witnesses, and their authority, are their best guides in finding indictments. When such testimonies make the charge manifest and clear to the jury, they are called evidence, because they make the guilt of the criminal evident, and are like the light that discovers what was not seen before: all witnesses for that reason are usually called the evidence, taking their name from what they ought to be: yet witnesses may swear directly and positively to an accusation, and be no evidence of its truth to the jury; sometimes such remarks may be made upon the witnesses, as well as in relation to their reputation and lives, as to the matter, manner, and circumstance of their depositions, that from thence the falshood may appear, or be strongly suspected: it is therefore necessary to know what they mean by a probable cause or evidence, who say that our law requires no more for an indictment.

Probable, is a logical term, relating to such propositions, as have an appearance, but no certainty of truth, shewing rather what is

not, than what is, the matter of syllogisms: these may be allowed in rhetorick, which worketh upon the passions, and makes use of such colours as are fit to move them, whether true or false; but not in logick, whose object is truth; as it principally intends to obviate the errors that may arise from the credit given unto appearances, by distinguishing the uncertain from the certain, *verisimile à vero*, it cannot admit of such propositions as may be false as well as true; it being as impossible to draw a certain conclusion from uncertain premises, as to raise a solid building upon a tottering or sinking foundation. This ought principally to be considered in courts of justice, which are not erected to bring men into condemnation, but to find who deserves to be condemned: and those rules are to be followed by them, which are least liable to deception. For this reason the counsel of the Areopagites, and some others of the best judicatures that have been in the world, utterly rejected the use of rhetorick, looking upon the art of persuading by uncertain probabilities, as little differing from that of deceiving, and directly contrary to their ends, who, by the knowledge of truth, desired to be led in the doing of justice: but if the art that made use of these probabilities was banished from uncorrupted tribunals, as a hindrance unto the discovery of truth, they that would ground verdicts totally upon them, declare an open neglect of it; and as it is said, that *uno absurdo dato mille sequuntur*, if juries were to be guided by probabilities, the next question would be concerning the more or less probable,

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bable, or what degree of probability is required to persuade them to find a bill : this being impossible to fix, the whole proceedings would be brought to depend upon the fancies of men ; and as nothing is so flight but it may move them, there is no security that innocent persons may not be brought every day into danger and trouble. By this means certain mischiefs will be done, whilst it is by their own confession uncertain whether they are any ways deserved by such as suffer them, to the utter overthrow of all justice.

If the word *probable* be taken in a common, rather than a nice logical sense, it signifies no more than likely, or rather more than unlikely : when a matter is found to be so, the wager is not even, there is odds upon one side, and this may be a very good ground, for betting in a tennis-court, or at a horse-race; but he that would make the administration of justice to depend upon such points, seems to put a very small value upon the fortunes, liberties and reputation of men, and to forget that those who sit in courts of justice have no other business there than to preserve them.

This continues in force, though in a dialogue between a Barrister and a Grand-Jury Man, published under the title of the Grand-Jury Man's Oath and Office, it be said, p. 8, and 9. " That their work is no more than to
 " present offences fit for a trial, and for that
 " reason, give in only a verisimilar or probable
 " charge ; and others have affirmed, that a
 " far less evidence will warrant a grand jury's
 " indict-

“ indictment, than a petit jury’s verdict.”

For nothing can be more opposite to the justice of our laws, than such opinions: all laws in doubtful cases direct a suspension of judgment, or a sentence in favour of the accused person: but if this were hearkened unto, grand juries should upon their oaths affirm, they judge him criminal, when the evidence is upon such uncertain grounds that they cannot but doubt, whether he is so or not.

It cannot be hereupon said, that no evidence is so clear and full, but it may be false, and give the jury occasion of doubts, so as all criminals must escape, if no indictment ought to be found unless the proofs are absolutely certain, for it is confessed that such cases are not capable of an infallible mathematical demonstration; but a jury, that examines all the witnesses, that are likely to give any light concerning the business in question, and all circumstances relating to the fact before them, with the lives and credit of those that testify it, and of the person accused, may and do often find that which in their consciences doth fully persuade them, that the accused person is guilty; this is as much as the law, or their oath doth require; and such as find bills, after having made such a scrutiny, are blameless before God and man, if through the fragility inseparable from human nature, they should be led into error? For they do not swear that the bill is true, but that they in their consciences believe that it is so; and if they write *ignoramus* upon the bill, it is not thereby de-

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clared to be false, nor the person accused acquitted, but the matter is suspended, until it can be more clearly proved, as in doubtful cases it always ought to be.

Our ancestors took great care that suspicious, and probable causes, should not bring any man's life, and estate into danger ; for that reason, it was ordained, by the Stat. of 37 Ed. III. cap. 18. " That such as made suggestions to the king, should find surety to pursue, and incur the same pain, that the other should have had if he were attainted, in case their suggestion be found evil ; and that then process of the law should be made against the accused."

This manner of proceeding hath its root on eternal, and universal reason : the law given by God unto his people, *Deut.* 19. allotted the same punishment unto a false witness, as a person convicted. The best-disciplined nations of the world learned this from the Hebrews, and made it their rule in the administration of justice. The Grecians generally observed it, and the Romans, according to their *Lex Talionis*, did not only punish death with death, but the intention of committing murder by false accusations, with the same severity, as if it had been effected by any other means. This law was inviolably observed, as long as any thing of regularity or equity remained amongst them ; and when through the wickedness of some of the emperors, or their favourites, it came to be overthrown, all justice perished with it. A crew of false informers broke out,

out, to the destruction of the best men, and never ceased, until they had ruined all the most eminent and antient families : circumvented the persons, that by their reputation, wealth, birth or virtue, deserved to be distinguished from the common sort of people, and brought desolation upon that victorious city. Tacitus complains of this, as the cause of all the mischiefs suffered in his time and country *.

By their means the most savage cruelties were committed under the name of law, which thereby became a greater plague, than formerly crimes had been : no remedy could be found, when those *Delatores*, whom he calls, *genus hominum publico exitio repertum, & pœnis quidem nunquam satis coercitum* †, were invited by impunity, or reward : and the miserable people groaned under this calamity, until those instruments of iniquity were by better princes put to the most cruel, though well-deserved deaths.

The like hath been seen in many places ; and the domestic quiet, which now is enjoyed in the principal parts of Europe, proceeds chiefly from this, that every man knows the same punishment is appointed for a false accusation, and a proved crime.

It is hardly seven years since Monsieur Courboyer, a man of quality in Britany, suborned two of the king of France's guards to swear treasonable designs against La Motte, a Norman gentleman ; the matter being brought to

* Tacitus, Ann. 3.

† Ibid. Ann. 4.

Monsieur Colbert, he caused the accused person and the witnesses to be secured, until the fraud was discovered by one of them, whereupon he was pardoned; La Motte released, Courboyer beheaded, and the other false witnesses hanged, by the sentence of the parliament of Paris. Though this law seems to be grounded upon such foundation, as forbids us to question the equity of it; our ancestors, (for reasons best known unto themselves) thought fit to moderate its severity, by the Statute of 38 Ed. III. cap. 9. yet then it was enacted, and the law continues in force unto this day, "that whosoever made complaints to the king, and could not prove them against the defendant," by the process of the law limited in former statutes, which is first by a grand jury; he "should be imprisoned until he had made gree to the party of his damages, and of the slander he suffered by such occasion, and after shall make fine and ransom to the king," which is for the common damage that the king and his people suffer by such a false accusation and defamation of any subject: and in the 42d of Ed. III. cap. 3. "to eschew the mischiefs and damage done by false accusers," it is enacted, "that no man be put to answer such suggestions, without presentment before the justices;" *i. e.* by the grand jury: it cannot surely be imagined, that the suggestions made to the king and his counsel, had no probability in them, or that there was no colour, cause or reason for the king to put

put the party to answer the accusation : but the grievance and complaint was, that the people suffered certain damage and vexation upon untrue, and at best uncertain accusations, and that therein the law was perverted by the king and his counsel's taking upon them to judge of the certainty or truth of them, which of right belonged to the grand jury only, upon whose judgment and integrity our law doth wholly rely, for the indemnity of the innocent, and punishment of all such as do unjustly molest them.

Our laws have not thought fit so absolutely to depend upon the oaths of witnesses, as to allow, that upon two, or ten men's swearing positively treason or felony against any man, before the justices of peace, or all the judges, or before the king and his council, that the party accused, be he either peer of the realm, or commoner, should without farther inquiry be thereupon arraigned, and put upon his trial for his life : yet none can doubt but there is something of probability in such depositions ; nevertheless the law refers those matters unto grand juries, and no man can be brought to trial, until upon such strict inquiries, (as is before said) the indictment be found. The law is so strict in these inquiries, that though the crime be never so notorious, nay, if treason should be confessed in writing under hand and seal, before justices of peace, secretaries of state, or the king and council ; yet before the party can be arraigned for it, the grand jury must inquire, and be satisfied, whether
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such a confession be clear and certain : whether there was no collusion therein : or the party induced to such a confession by promise of pardon : or that some pretended partakers in the crime may be defamed, or destroyed thereby ; they must inquire, whether the confession was not extorted by fear, threatenings, or force, and whether the party was truly *compos mentis*, of sound mind and reason at that time.

The Stat. of 5 Eliz. cap. 1. declares the ancient common law concerning the trust and duty of juries ; and enacts, that none should “ be
 “ indicted for assisting, aiding, comforting,
 “ or abetting” criminals in the treasons therein made and declared, “ unless he, or they be
 “ thereof lawfully accused by such good and
 “ sufficient testimony or proof, as by the jury,
 “ by whom he shall be indicted, shall be
 “ thought good, lawful, and sufficient to
 “ prove him, or them guilty of the said offences.” Herein is declared, the only true reason of indictments, *i. e.* the grand jury’s judgment that they have such testimonies as they esteem sufficient to prove the party indicted guilty of the crimes whereof he is accused, and whatsoever the indictment doth contain, they are to present no more, or other crimes, than are proved to their satisfaction, as upon oath they declare it is, when they present it. This exactness is not only required in the substance of crimes, but in the circumstances, and any doubtfulness or uncertainty in them makes the indictment, and all proceedings

ceedings upon it by the petit jury, to be insufficient, and void, and holden for none, as appears by the following cases.

In Young's case, in the Lord Coke's Reports, *lib. 4. fol. 40.* an indictment for murder was declared void for its incertainty, because the jury had not laid certainty, in what part of the body the mortal wound was given, saying only, that it was about his breast; the words were, *Unam plagam mortalem circiter pectus.* In like manner, in Vaux's Case, Coke's Reports, *lib. 4. fol. 44.* he being indicted for poisoning Ridley, the jury had not plainly and expressly averred, that Ridley drank the poison, though other words implied it, and thereupon the indictment was judged insufficient; "for (saith the book) the matter
 " of an indictment ought to be full, express,
 " and certain, and shall not be maintained by
 " argument or implication, for that the in-
 " dictment is found by the oath of the neigh-
 " bourhood." In the second part of Roll's Reports, p. 263. Smith and Mall's case, the indictment was quashed for incertainty, because the jury had averred that Smith was either a servant or a deputy, *Smith existens servus sive deputatus*, are the words: it was doubtless probably enough proven to the jury, that he was either a deputy, or servant, but because the indictment did not absolutely and certainly aver his condition either of servant or deputy, it was declared void: if there be any defect of certainty in the grand jury's verdict, no proof or evidence to the petit jury can sup-
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ply it, so it was judged by Wrote and Wig's case, Coke, 4. Rep. fol. 45, 46, 47. It was laid, that Wrote was killed at Shipperton, but did not aver that Shipperton was within the verge, though in truth it was, and no averment or oath to the petit jury, could supply that small failure of certainty to support the indictment; and the reason is rendered in these words, viz. "The indictment being
 " *veredictum*, id est, *dictum veritatis*, a verdict,
 " that is, a saying of truth, and matter of
 " record, ought to contain the whole truth,
 " which is requisite by the law, for when it
 " doth not appear, it is the same as if it were
 " not, and every material part of the indict-
 " ment ought to be found upon the oath of
 " the indicters, and cannot be supplied by
 " the averment of the party." The grand jury's verdict is the foundation of all judicial proceeding against capital offenders (at the king's suit) if that fail in any point of certainty, both convictions and acquittals thereupon are utterly void, and the proceedings against both may begin again, as if they had never been tried, as it appears in the case last cited, fol. 47.

Now as the law requires from the grand jury, particular, certain, and precise affirmations of truth, so it expects that they should look for the like, and accept of no other from such as bring accusations to them. For no man can certainly affirm that which is uncertainly delivered unto him, or which he doth not firmly believe. The witnesses that they
 receive

receive for good, are to depose only absolute certainties about the facts committed, that is, what they have seen or heard, from the accused parties themselves, not what others have told them; they are not to be suffered to make probable Arguments, and infer from thence the guilt of the accused; their depositions ought to be positive, plain, direct and full: the crime is to be sworn without any doubtfulness or obscurity; not in words qualified, and limited to belief, conceptions, or apprehensions. This absolute certainty required in the deposition of the witnesses, is one principal ground of the jury's most rational assurance of the truth of their verdict. The credit also of the witnesses ought to be free from all blemish, that good and conscientious men may rationally rely upon them in matters of so great moment as the blood of a man. It must also be certainly evident, that all the matters which they depose, are consistent with each other, and accompanied with such circumstances as in their judgment render it credible. All just indictments must be built upon these moral assurances, which the wisdom of all nations hath devised as the best and only way of deciding controversies. Neither can a grand juryman, who swears to present nothing but the truth, be satisfied with less.

It is scarce credible, that any learned in our laws should tell a grand jury, that a far less evidence will warrant their indictment, being but an accusation, than the petit jury ought to

have for their verdict. Both of them do, in like manner, plainly and positively affirm upon their oaths the truth of the accusation; their verdicts are indeed one and the same in substance and sense, though not in words. There is no real difference between affirming in writing that an indictment of treason is true, as is the practice of grand juries, and saying that the party tried thereupon is guilty of the treason whereof he is indicted, as is the course of petit juries. They are both upon their oaths; they are equally obligatory unto both: the one therefore must expect the same proof for their satisfaction as the other; and as clear evidence must be required for an indictment as for a verdict. It is unreasonable to think that a slighter proof should satisfy the consciences of the greater jury, than is requisite to convince the less; and uncharitable to imagine, that those should not be as sensible as the others of the sacred security they have given by oath, to do nothing in their offices but according to truth.

If there ought to be any difference in the proceedings of the grand and petit juries, the greater exactness and diligence seems to be required in the grand jury: for as the same work of finding out the truth, in order to the doing of justice, is allotted unto both, the greatest part of the burthen ought to lie upon them that have the best opportunities of performing it. The invalidity, weakness, or defects of the proofs, may be equally evident to either of them; but if there be deceit in stifling true testimonies, or malice in suborning

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ing wicked persons to bring in such as are false, the grand jury may most easily, nay probably only can discover it : they are not straitened in time ; they may freely examine in private, without interruption from the counsel or court, such witnesses as are presented unto them, or they shall think fit to call : they may jointly or severally inquire of their friends or acquaintance after the lives and reputations of the witnesses, or the accused persons and all circumstances relating unto the matter in question, and consult together under the seal of secrecy. On the other side, the petit jury being charged with the prisoner, acts in open court, under the awe of the judges ; is subject to be disturbed or interrupted by counsel ; deprived of all opportunity of consulting one another until the evidence be summed up ; and not suffered to eat or drink until they bring in a verdict. So is it almost impossible for them, thus limited, to discover such evil practices as may be used for or against the prisoner, by subornation or perjury to pervert justice. If therefore the grand jury be not permitted to perform this part of their duty, it is hard to imagine how it should be done at all ; and it is much more inconceivable how they can satisfy their consciences, if they so neglect as to find a bill upon an imperfect evidence, in the absence of the prisoner, in expectation that it will be supplied at the bar : it concerns them therefore to remember, that if they proceed upon such uncertainties, they will certainly give incurable wounds to their neighbour's

neighbour's reputations, in order to the destruction of their persons.

Whatever ground this doctrine of indicting upon slight proofs may have got in our days, it is, as we have seen, both against law and reason, and contrary to the practice of former times. My lord Coke, in his *Comment on Westminster 2d*, tells us, " That in those days, (and as yet, it ought to be) " indictments " taken in the absence of the party, were " formed upon plain and direct proofs, and " not upon probabilities and inferences." Herein we see that the practice of our forefathers, and the opinion of this great and judicious lawyer, were directly against this new doctrine : and some that have carefully looked backward, observed, that there are very few examples of men acquitted by petit juries, because grand juries of old were so wary in canvassing every thing narrowly, and so sensible of their duty in proceeding according unto truth, upon satisfactory evidence, that few or none were brought unto trial till their guilt seemed evident.

It is therefore a great mistake, to think that the second juries were instituted for the hearing of fuller proofs : that was not their work, but to give an opportunity to the accused persons to answer for themselves, and make their defence; which cannot be thought to strengthen the evidence, unless they be supposed to play booty against their own lives. By way of answer, the prisoner may avoid the charge : he is permitted to take exceptions :

ons : he may demur or plead to the indictments in points of law. Herein the judges ought to assist him ; and appoint counsel, if he desire it. He may shew the indicters, that is, the grand jury, or some of them, are not lawful men, or not lawfully returned by the sheriff. Embracery or practice may be proved in the packing of a jury ; a conspiracy or subornation may be discovered. Falshood may be found out in the witnesses, by questions about some circumstances that none could have asked or imagined, except the party accused. And besides doing right to the indicted in these and many other things, it is the people's due to have all the evidence first taken in private, to be afterwards made public at the trial, that the kingdom may be satisfied in the equal administration of justice, and that the judgments against criminals may be of greater terror, and more useful to preserve the common peace.

If any object, that this doctrine would introduce double trials for every offence, and all the delays that accompany them ; it may be answered, that *Nulla unquam de morte hominis cunctatio longa est*, Juv. Sat. “ No delay is to “ be esteemed long, when the life of a man is “ in question.” The punishment of an offender, that is a little deferred, may be compensated by its severity ; but blood rashly spilt cannot be gathered up ; and a land polluted by it is hardly cleansed. Wise and good men, in matters of this nature, have ever proceeded with extreme caution, whilst the swift of

foot for that business are in the scripture represented under an ill character, and have been often found in their haste to draw more guilt upon themselves, than what they pretended to chastise in others. To avoid this mischief, in many well-polished kingdoms, several courts of justice are instituted, who take cognizance of the same facts, but so subordinate unto one another, that in matters of life, limb, liberty, or other important cases, there is a right of appeal from the inferior, before which it is first brought, to the superior : where this is wanting, means have been found to give opportunity unto the judges to reflect upon their own sentences, that if any thing had been done rashly, or through mistake, it might be corrected : man, even in his best estate, seeming to have need of some such helps. Tiberius Cæsar was never accused of too much lenity, but when he heard that Lutorius Priscus had been accused of treason before the senate, condemned, and immediately put to death, *Tam præcípites deprecatus est pœnas*, he desired that such sudden punishment might for the future be forborn, and a law was thereupon made, “ That no decree “ of the senate should in less than ten days “ be transmitted to the treasury,” before which time it could not be executed, *Tacit. Ann. 3.* Matters of this nature concerning every man in England, it is not to be doubted but our ancestors considered them ; and our constitution neither admitting of subordinate judicatures, from whence appeals may be made,

made, nor giving opportunities unto juries to re-examine their verdicts after they were given, they could not find a way more suitable unto the rules of wisdom, justice and mercy, than to appoint two juries, with equal care, according unto different methods, the one in private and at leisure, the other publicly in the presence of the party, and more speedy, to pass upon every man ; so as none can be condemned unless he be thought guilty by them both. And it cannot be imagined, that so little time as is usually spent in trials at the bar, before a petit jury, should be allowed unto one that pleads for his life, or unto them, who are to be satisfied in their consciences, unless it were presumed, that the grand jury had so well examined, prepared, and digested the matter, that the other may proceed more succinctly, without danger of error.

Therefore let the grand juries faithfully perform their high trust, and neither be cheated nor frightened from their duty : let them pursue the good old way, since no innovation can be brought in, that will not turn to the prejudice of the accused persons and themselves. Let them not be deluded with frivolous arguments, so as to invalidate a considerable part of our law, and render themselves insignificant ciphers, in expectation that petit juries will repair the faults they commit ; since that would be no less than to slight one of the best fences that the law provides for our lives and liberties, and very much to weaken the other.

When a grand jury finds a bill against any person, they do all that in them lies to take away his life, if the crime be capital ; and it is ridiculous for them to pretend they rely upon the virtue of the petit jury, if they shew none in themselves. They cannot reasonably hope the other should be more tender of the prisoner's concerns, more exact in doing justice, or more careful in examining the credit of the witnesses, when they have not only neglected their duty of searching into it, but added strength unto their testimony, by finding a bill upon it.

They cannot possibly be exempted from the blame of consenting, at the least, unto the mischiefs that may ensue, unless they use all the honest care that the law allows to prevent them ; nor consequently avoid the stain of the blood that may be shed by their omission, since it could not have been, if they had well performed their part before they found the indictment, whereby the party is exposed to so many disadvantages, that it is hard for the clearest innocence to defend itself against them.

But when the one and the other jury act as they ought, with courage, diligence and impartiality, we shall have just reason, with the wise lord chancellor Fortescue, to celebrate that law that instituted them,* : to congratulate with our countrymen the happiness we enjoy, “ whilst our lives lie not at the mercy
“ of unknown witnesses, hired, poor, uncer-

* Fortesc. *de Laud. Leg. Ang. cap. 26.*

“ tain ;

" tain ; whose conversation or malice we are
 " strangers to ; but neighbours of substance,
 " of honest report, brought into court by an
 " honourable sworn officer : men who know
 " the witnesses, and their credit, and are to
 " hear them and judge of them : that want no
 " means for disclosing of truth ; and from
 " whom nothing can be hid, which can fall
 " within the compass of human knowledge."

" **A**FTER that the King for the space
 " of three years and more, had remain-
 " beyond sea*, and returned out of Gascoign
 " and France into England, he was much
 " vexed and disturbed by the continual cla-
 " mour both of the clergy and laity, desiring
 " to be relieved against the justices, and other
 " his majesty's ministers, of several oppres-
 " sions and injuries done unto them, contrary
 " to the good laws and customs of the realm ;
 " whereupon king Edward by his royal letters
 " to the severall sheriffs of England, com-
 " manded that in all counties, cities, and mar-
 " ket towns, a proclamation should be made,
 " that all who found themselves aggrieved
 " should repair to Westminster at the next
 " parliament, and there shew their grievances,
 " where as well the great as the less should
 " receive fit remedies and speedy justice, ac-

* *Postquam rex per spatium trium annorum et amplius in partibus
 transmarinis remansisset, &c.*

“ cording as the king was obliged by the bond
 “ of his coronation oath : and now that great
 “ day was come, that day of judging even
 “ the justices, and the other ministers of the
 “ king’s council, which by no collusion or re-
 “ ward, no argument or art of pleading they
 “ elude or avoid : the clergy therefore and the
 “ people being gathered together, and seated
 “ in the great palace of Westminster, the
 “ archbishop of Canterbury (a man of emi-
 “ nent piety, and as it were a pillar in the
 “ holy church and the kingdom) rising from
 “ his seat, and fetching a profound sigh, spoke
 “ in this manner : Let this assembly know
 “ that we are called together concerning the
 “ great and weighty affairs of the kingdom,
 “ too much alas of late disturbed, and still
 “ out of order, unanimously, faithfully and
 “ effectually with our lord the king to treat
 “ and ordain : ye have all heard the grievous
 “ complaints of the most intolerable injuries
 “ and oppressions, of the daily desolations
 “ committed both on church and state, by
 “ this corrupt counsel of our lord the king,
 “ contrary to our great charters, so many
 “ and so often, purchased and redeemed,
 “ granted and confirmed to us by the
 “ several oaths of our lord the king that
 “ now is, and of our lords king Henry
 “ and John, and corroborated by the dread-
 “ ful thunderings of the sentence of excom-
 “ munication against the invaders of our com-
 “ mon liberties of England in our said char-
 “ ters contained; and when we had conceived

“ firm
 “ firm

“ firm and undoubted hopes, that these our
 “ liberties would have been faithfully pre-
 “ served by all men, the king, circumvented
 “ and seduced by the counsels of evil ministers,
 “ hath not been afraid to inviolate it by in-
 “ fringing them, falsely believing that he could
 “ for rewards be absolved from that offence,
 “ which would be the manifest destruction of
 “ the kingdom.

“ There is another thing also that grieves
 “ our spirits that the justices subtilly and ma-
 “ liciously, by divers arguments of covetous-
 “ and intolerable pride, have the king against
 “ his faithful subjects sundry ways incited and
 “ provoked, counselling him contrary to the
 “ good and wholesome advice of all the liege-
 “ men of England, and have not blushed nor
 “ been afraid, impudently to assert and prefer
 “ their their own foolish counsels, as if they
 “ were more fit to consult and preserve the
 “ commonwealth, than all the estates of the
 “ kingdom together assembled; so that they
 “ be truly said of them, they are the men,
 “ that troubled the land, and disturbed the
 “ nation under a false colour of gravity, have
 “ the whole people grievously oppressed, and
 “ under pretence of expounding the antient
 “ laws, have introduced new, I will not say
 “ laws, but evil customs: so that through the
 “ ignorance of some, and the partiality of others,
 “ who for reward or fear of great men have
 “ been engaged, there was no certainty of
 “ law, and they scorned to administer justice
 “ to the people, their deeds are deeds of wick-
 “ edness,

" edness, and the work of iniquity is in their
 " hand, their feet make haste to evil, and
 " the way of truth have they not known;
 " what shall I say? there is no judgment in
 " their paths.

" How many free-men of this land, faith-
 " ful subjects of our lord the king, have like
 " the meanest slaves of lowest condition with-
 " any fault been cast into prison, where some
 " by hunger, grief, or the burden of their
 " chains, have expired, they have also extort-
 " ed at their pleasure infinite sums of money
 " for their ransoms; the coffers of some, that
 " they might fill their own, as well from the
 " rich as the poor, they have exhausted, by
 " reason whereof they have contracted the
 " irreconcilable hatred and dreadful impreca-
 " tions of all men, as if they had purchased
 " and obtained such an incommunicable
 " privilege, by their detestable *Charter of non*
 " *obstante*, that they might at their own lust
 " be free from all laws both human and
 " divine.

" Moreover, there is another more than or-
 " dinary grievance, which hitherto hath, and
 " in some measure doth still rage among us:
 " all things are exposed to sale, if not as it
 " were to plunder and theft. Alas! how
 " great power hath the love of money in the
 " breasts of men? Hear therefore, O ye
 " wicked, from my mouth the dreadful de-
 " cree of Heaven; the dejection of your
 " countenances accuse you, and like the men
 " of Sodom, ye have not hidden but pro-
 " claimed

" claimed the sin : Wo be to your souls, wo
 " be to them that make laws, and writing
 " write injustice, that they may oppress the
 " poor in judgment, and injure the cause
 " of the humble, that widows may become
 " their prey, and that they might destroy
 " the orphan. Wo be to those that build
 " their houses in injustice, and their taber-
 " nacles in unrighteousness : wo be to them
 " that covet large possessions, that break
 " open houses, and destroy the man and his
 " inheritance : wo be to such judges who are
 " like wolves in the evening, and leave not
 " a bone till the morning. The righteous
 " judge will bring such counsellors to a fool-
 " ish end, and such judges to confusion : ye
 " shall all presently with a loud cry, receive
 " the just sentence of the land.

" At the hearing of these things all ears
 " tingled, and the whole community lifted
 " up their voice, and mourned, saying, Alas!
 " alas for us ! what is become of that English
 " Liberty which we have so often purchased,
 " which by so many concessions, so many sta-
 " tutes, so many oaths, hath been confirmed to
 " us ?

" Hereupon several of the criminals with-
 " drew into secret places, being concealed by
 " their friends ; some of them were brought
 " forth into the midst of the people, and de-
 " servedly turned out of their offices ; one
 " was banished the land, and others were
 " grievously fined, or condemned to perpetual
 " imprisonment.

" This

" This is confirmed by Spelman, An. 1290
 " all the justices of England, saith he, were
 " An. 18 Ed. I. apprehended for corruption,
 " except John Mettingham, and Elias Bleck-
 " ingham, whom I name for their honour,
 " and by judgment of parliament condemn-
 " ed, some to imprisonment, others to banish-
 " ment, or confiscation of their estates, and
 " none escaped without grievous fines, and
 " the loss of their offices."

FINIS.